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**FINAL**  
**CITY COUNCIL**  
  
**CITY OF WICHITA**  
**KANSAS**

City Council Meeting  
09:30 a.m. June 23, 2009

First Floor Board Room  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Approve the minutes of the regular meeting on June 16, 2009

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**COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES**

**PLANNING AGENDA**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

**V. CONSENT PLANNING AGENDA (ITEMS 1 AND 2)**

1. \*CUP2008-52 - Reconsideration of the City Council's deferral of CUP2008-52 – DP 18 Amendment #3 to allow a night club on property zoned LC Limited Commercial; generally located north of 21st Street North and east of Somerset Avenue, 1580 West 21st Street North. (District VI)

RECOMMENDED ACTION: 1) Approve a change to the previous City Council deferral of this request, and schedule the request to be heard by the City Council on July 7, 2009; OR 2) Allow the current City Council ruling to stand, which was to defer this request until after such time as the new entertainment ordinance is passed, and at that time send it back through the district advisory board and the MAPC

2. \*ZON2009-11 - City zone change from GO General Office ("GO") to OW Office Warehouse ("OW") with a Protective Overlay ("PO"); generally located southeast of the intersection of Oak Knoll Street and Pawnee Avenue, approximately 1/3 mile east of Rock Road. (District II)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC, approve the zone change subject to the additional recommended provisions of the Protective Overlay; place the ordinance establishing the zone change on first reading; OR 2) Return the application to the MAPC for reconsideration.  
(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

## **HOUSING AGENDA**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Allan Murdock, Housing Member is also seated with the City Council.**

### **VII. CONSENT HOUSING AGENDA**

None

## **AIRPORT AGENDA**

NOTICE: The City Council is meeting as the governing body of the Airport for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

### **IX. CONSENT AIRPORT AGENDA**

None

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## **COUNCIL AGENDA**

### **X. COUNCIL MEMBER AGENDA**

None

### **XI. COUNCIL MEMBER APPOINTMENTS**

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.



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**XII. CONSENT AGENDA (ITEMS 1 THROUGH 16A)**

1. Report of Board of Bids and Contracts dated June 22, 2009.

- a. Report of Board of Bids and Contracts.

RECOMMENDED ACTION: Receive and file report; approve Contracts;  
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2009</u>	<u>(Consumption on Premises)</u>
Tammy Phan	Da Nang Restaurant Corp*	1556 North Broadway SU 600
<u>Renewal</u>	<u>2009</u>	<u>(Consumption off Premises)</u>
Doug Wald	Presto #52	12728 East Central
William Gipson	Jasmine's One-Stop	403 South Hydraulic

\* General/Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates. (See attached)

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Sanitary Sewer to serve Lot 1, Block A, Metal-Fab Addition, east of Sheridan, south of May. (District IV)  
b. Renovate Building Facade in the Core Area. (District I)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Agreements/Contracts:

- a. Program Management Services for Water Supply Projects - Supplemental Agreement.  
b. Contract proposal for closed captioning of City Council telecasts on City7.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Change Orders:

- a. Water Treatment Plant Residuals Project, Pipeline A - Change Order.  
b. Emporia at William Intersection Improvement. (District VI)

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

7. Property Acquisitions:

- a. Acquisition of a Temporary Easement at the Northeast Corner of Murdock and Mt. Carmel for the 9th Street Drainage Outfall Project. (District VI)
- b. Partial Acquisition of 1601 South Hydraulic for the Hydraulic: Harry to Kellogg Improvement Project. (District I)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

8. Minutes of Advisory Boards/Commissions

District Advisory Board I, April 6, 2009  
Wichita Airport Advisory Board, May 4, 2009  
Board of Code Standards and Appeals, May 4, 2009  
District VI Advisory Board, May 4, 2009  
Wichita Board of Appeals of Plumbers and Gas Fitters, May 6, 2009  
Arts Council, May 14, 2009  
Wichita Employees' Retirement System, March 18, 2009  
Wichita Employees' Retirement System, April 22, 2009  
Deferred Compensation Board, February 19, 2009  
Deferred Compensation Board, March 13, 2009  
Deferred Compensation Board, April 8, 2009  
Deferred Compensation Board, April 16, 2009  
Police and Fire Retirement System, March 25, 2009  
Wichita Employees' Retirement Board/Police and Fire Retirement Board, April 2, 2009

RECOMMENDED ACTION: Receive and file.

9. Resolution Considering a Second Amendment of a Redevelopment Plan, Douglas and Hillside Redevelopment District. (District II)

RECOMMENDED ACTION: Adopt the resolution setting a public hearing on July 7, 2009 to consider a second amendment to the Project Plan for the Douglas and Hillside Redevelopment District, authorize the necessary signatures and direct the City Clerk to cause the resolution to be published on two consecutive weeks prior to the date set for the public hearing.

10. Southeast Water Transmission Main. (Districts I, II, and IV)

RECOMMENDED ACTION: Amend the CIP, approve the 2009 expenditure, adopt the Resolution, and authorize the necessary signatures.

11. Aquifer Storage and Recovery - Well Field Maintenance Facility and Supervisor's Residence.

(PULLED PER CITY MANAGER)

12. Monthly Claims Report for the month of May 2009. (See Attached)

RECOMMENDED ACTION: Receive and file.

13. 2007/2008 Sidewalk and Wheelchair Ramp Program.

RECOMMENDED ACTION: Place the amending ordinance on first reading.

14. Application for Street Resurfacing Project for Southeast Boulevard (K-15 Highway), between the I-135 Freeway and the Kansas Turnpike Bridge. (District III)

RECOMMENDED ACTION: Approve the application and authorize the necessary signatures.

15. Veterans Affairs Supportive Housing Grant Application.

RECOMMENDED ACTION: Authorize submission of an application for 35 Housing Choice Vouchers for rental assistance for homeless veterans, and authorize the necessary signatures.

15a. *Water and Sewer Utility Revenue Bonds, Series 2009A and 2009B.*

RECOMMENDED ACTION: Approve the revised Bond Purchase Agreement and adopt the amending Resolution.

16. Second Reading Ordinances: (First Read June 16, 2009)

- a. List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

\*\*\*Workshop to follow\*\*\*

City of Wichita  
City Council Meeting  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** Reconsideration of the City Council's deferral of CUP2008-52 – DP-18 Amendment #3 to allow a night club on property zoned LC Limited Commercial; generally located north of 21st Street North and east of Somerset Avenue (1580 W. 21<sup>st</sup> Street North). (District VI)

**INITIATED BY:** Metropolitan Area Planning Department

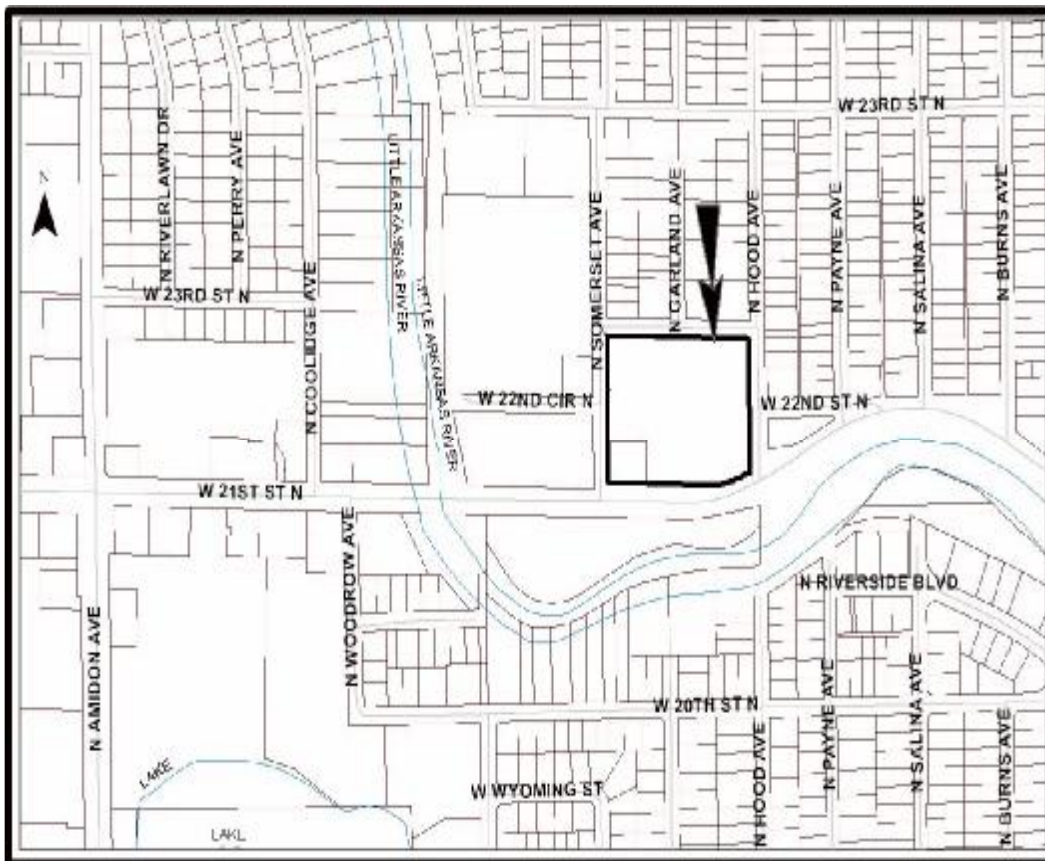
**AGENDA:** Planning (Consent)

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**MAPC Recommendations:** N/A

**MAPD Staff Recommendations:** N/A

**DAB Recommendations:** N/A



**BACKGROUND:** On March 10, 2009, the City Council approved a motion to defer final action on this CUP Amendment request until after the new entertainment ordinance had been acted upon, and to require the CUP Amendment to be re-heard at the district advisory board and the MAPC after work on the entertainment ordinance had been completed. The applicant is requesting approval of a CUP amendment to allow a nightclub within an existing restaurant located at 1580 W. 21<sup>st</sup> Street North. The applicant wishes to use 5,000 square feet of the existing restaurant as a nightclub and private rental facility; this space is limited by fire code to a 300 person occupancy. DP-18 does not currently allow a nightclub as a permitted use for this site. Also, the site is located within 200 feet of a church and multi-family residential zoning; these factors require the applicant to request a CUP amendment for a nightclub.

**Analysis:** DAB VI heard this request on January 5, 2009. One person spoke against the request, one business neighbor asked questions and expressed concerns and several people spoke in support of the request at the DAB hearing. DAB VI approved the request subject to staff recommendations by a vote of 10-0.

The MAPC heard this request on January 8, 2009. At the MAPC hearing, the manager of a nearby apartment complex located west of the site spoke against the request. One residential neighbor spoke in support of the request, and one business neighbor asked questions and expressed concerns. The action of the MAPC was to approve the request subject to staff recommended conditions. Following the MAPC hearing, 23 properties filed protests for a total of 63% of the protest area.

City Council initially heard this request on February 10, 2009; the Council deferred the case to the March 10, 2009, hearing. A neighborhood meeting was held on March 3, 2009. At that meeting, city staff and the applicant agreed to modified conditions which would further limit the applicant to the current DE-R liquor license and have a CUP Amendment revocation clause. The majority of those in attendance at the neighborhood meeting were opposed to the request. City Council then re-heard the request on March 10, 2009. The City Council action was to defer this request until after such time as the new entertainment ordinance was acted upon and directed staff to send the application back through the district advisory board and the MAPC following the City Council's action on the entertainment ordinance. The applicant requests that the Council rescind its March 10, 2009, decision to defer action on the CUP Amendment only after action on the entertainment ordinance, and rehear the item on the City Council's agenda on July 7, 2009.

**Financial Considerations:** None.

**Goal Impact:** Promote Economic Vitality and Affordable Living.

**Legal Considerations:** No ordinance is required.

**Recommendation/Actions:**

1. Approve a change to the previous City Council deferral of this request, and schedule the request to be heard by the City Council on July 7, 2009. Or,
2. Allow the current City Council ruling to stand, which was to defer this request until after such time as the new entertainment ordinance is passed, and at that time send it back through the district advisory board and the MAPC

City of Wichita  
City Council Meeting  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** 2007/2008 Sidewalk and Wheelchair Ramp Program  
(All Districts)

**INITIATED BY:** Department of Public Works

**AGENDA:** Consent

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**Recommendation:** Approve the amending ordinance.

**Background:** The Capital Improvement Program includes ongoing funding to construct sidewalks on major streets and wheel chair ramps that comply with the Americans with Disabilities Act. On November 6, 2007, the City Council adopted an ordinance that authorized bond funding for the 2007/2008 Sidewalk and Wheelchair Ramp Program. The ordinance contained an error in describing one of the sidewalk locations as the “Riverside Sidewalk”. The State Statute requires that the location be referenced as a city street.

**Analysis:** An amending ordinance has been prepared to correct the error.

**Financial Considerations:** The approved budget of \$900,000 is not affected.

**Goal Impact:** This project addressed the Efficient Infrastructure goal by improving pedestrian access along public streets.

**Legal Considerations:** The Law Department has approved the amending ordinance as to legal form.

**Recommendation/Action:** It is recommended that the City Council place the amending ordinance on first reading.

**Attachment:** Amending ordinance.

## Published in the Wichita Eagle on

ORDINANCE NO. 48-359

AN ORDINANCE AMENDING ORDINANCE NO. **47-674** OF THE CITY OF WICHITA, KANSAS DECLARING **13TH, BETWEEN GATEWOOD AND WEBB; MACARTHUR, BETWEEN BROADWAY AND LAURA; OLIVER, BETWEEN 17TH AND 21ST; ROCK, BETWEEN THE UNION PACIFIC RAILROAD TRACKS AND 45TH STREET NORTH; LINCOLN, BETWEEN BLUFF AND BLUFFVIEW; 21ST STREET AT THE BIKE PATH LINK WEST OF MAIZE; MERIDIAN, BETWEEN 31ST STREET SOUTH AND I-235; TYLER, BETWEEN 29TH STREET NORTH AND MAIZE SCHOOL AND ARKANSAS, BETWEEN 42ND STREET NORTH AND 45TH STREET NORTH 2007/2008 SIDEWALK AND WHEELCHAIR RAMP PROGRAM (472-84604)** TO BE MAIN TRAFFICWAYS WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAYS; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

SECTION 1. SECTION 1 of Ordinance **47-674** is hereby amended to read as follows:

“SECTION 1. That **13th, between Gatewood and Webb; Macarthur, between Broadway and Laura; Oliver, between 17th and 21st; Rock, between The Union Pacific Railroad Tracks and 45th Street North; Lincoln, between Bluff and Bluffview; 21st Street at the bike path link west of Maize; Meridian, Between 31st Street South and I-235; Tyler, Between 29th Street North and Maize School and Arkansas, between 42nd Street North and 45th Street North 2007/2008 Sidewalk and Wheelchair Ramp Program (472-84604)** in the City of Wichita, Kansas are hereby designated and established as main trafficways, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. 12-685.”

SECTION 2. SECTION 2 of Ordinance **No. 47-674** is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared necessary by the governing body of the City of Wichita, Kansas, to make improvements to **13th, between Gatewood and Webb; Macarthur, between Broadway and Laura; Oliver, between 17th and 21st; Rock, between The Union Pacific Railroad Tracks and 45th Street North; Lincoln, between Bluff and Bluffview; 21st Street at the bike path link west of Maize; Meridian, between 31st Street South and I-235; Tyler, between 29th Street North and Maize School and Arkansas, between 42nd Street North and 45th Street North 2007/2008 Sidewalk and Wheelchair Ramp Program (472-84604)** as main trafficways in the following particulars:

The design and construction of sidewalk and wheelchair ramps listed on attached as Exhibit A necessary for a major traffic facility.”

SECTION 3. The original SECTIONS 1 and 2 of Ordinance **No. 47-674** are hereby repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the Governing body of the City of Wichita, Kansas this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Subleitt, City Clerk

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law



ORDINANCE NO. 48-358

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

**SECTION 1.** That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

**Case No. ZON2009-00011**

Zone change from GO General Office ("GO") to OW Office Warehouse ("OW") subject to the provisions of Protective Overlay #231 on property described as:

Lot 1, Block 1, Oak Knoll 3<sup>rd</sup> Village Addition, Wichita, Sedgwick County, Kansas; generally located southeast of the Oak Knoll – Pawnee Avenue intersection, east of Rock Road.

**SUBJECT TO APPROVAL BY THE GOVERNING BODY AND THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #231:**

- (a) Retain the GO General Office ("GO") zoning along the east and south 25 feet of Lot 1, Block 1, Oak Knoll 3rd Addition (subject site). This will serve as a 25-foot setback, open space, landscape buffer on the south and east sides of the subject site, where it abuts the existing residential developments.
- (b) No paving, storage, parking, or placement of equipment, including cars, trucks, graders, power shovels, skid steer, forklifts, chemicals, fuels, sand, gravel, forms, rebar, ties, hand tools or any materials or products within the 25-foot setbacks that serve as the open space, landscape buffer. No trash receptacles may be placed within the 25-foot setbacks that serve as the open space, landscape buffer, and all trash receptacles shall be screened.
- (c) No operation of power equipment is permitted within the 25-foot setbacks that serve as the open space, landscape buffer. Power equipment for mowing, trimming and care of the landscape within the 25-foot setbacks that serve as the open space, landscape buffer are the exception and are permitted.
- (d) No stacking of materials higher than 7 feet is permitted. All dirt, gravel or sand stored on the site will be watered to control dust, and placed on the northwest end of the site, at a distance no greater than 200 feet south of Oak Knoll and 200 feet from the west property line and will be enclosed on three sides with solid screening.
- (e) The Unified Zoning Code's Compatibility height standards are in effect, except that no building shall exceed a maximum height of 50 feet.
- (f) No bay doors or openings on buildings are allowed on their south or east facing walls.
- (g) All vehicle repair shall be done inside existing or new buildings

- (h) Parking of trucks and motorized equipment on the site will be no closer than 100 feet from the subject site's south side, where it abuts single-family residential development, and no closer than 50 feet around the rest of the subject site, where it abuts multifamily residential and/or condo development. All parking and storage areas will be per City Code; gravel for the areas where there is the storage of equipment and materials, paving for any drives and circulation aisles into the storage areas. The gravels areas will be watered, as needed, to control dust.
- (i) The following uses are permitted, except over the east and south 25 feet of the lot: College or University; Government Service; Community Assembly; Day Care, General; Library; Safety Service; Animal Care Limited; Automated Teller Machine; Bank or Financial Institution; Broadcast/Recording Studio; Construction Sales and Service; Farmer's Market in the City; Monument Sales; Nurseries and Garden Centers; Office, General; Personal Care Service; Personal Improvement Service; Post Office Substation; Printing and Copying, Limited; Retail General; Vocational School; Warehouse, Self-service Storage; Research Services; Warehousing; Wholesale or Business Services.
- (j) The limitation on outdoor storage contained in the OW district is waived. Materials that may be stored outside shall be limited to those associated with the uses permitted by this PO. Materials stored outside shall not occupy any setback or buffer areas established by this PO.
- (k) Lighting standards must be no taller than 15 feet, including the base, and be hooded to direct light onto the site, away from residential property. No lights shall be placed within the 25-foot setbacks that serve as the open space, landscape buffer.
- (l) A mix of evergreens, as listed in the landscape ordinance, shall be planted with a minimum height of two to three feet above the existing 8 foot concrete screening wall and planted on 16-foot centers, within the 25-foot setback, open space, landscape buffer, along the south and east sides of the subject site. Any replacement of dead evergreens would be per the same minimum height of two to three feet above the existing eight- foot concrete screening wall and will be done during the planting season when they died. The landscape plan shall prepared by a licensed landscape architect, be reviewed and approved by the Planning Department prior to the ordinance being published. The landscape plan shall include an irrigation system for maintenance of the approved landscape. All planting and the irrigation system must be in place within the 2009 planting season.
- (m) The solid masonry screening walls, along the east, south and north sides of the subject site shall be retained and shall be maintained in good repair.
- (n) No outside speakers/amplification communication system capable of being heard beyond the applicant's property line shall be utilized.
- (o) The applicant shall dedicate 10 feet of ROW, as agreed by the applicant and the Traffic Engineer, along Oak Knoll, and provide proof of the dedication prior to the ordinance being published.
- (p) The site shall be developed and operated in conformance will all applicable local, state and federal codes.
- (q) If the Zoning Administrator finds that there is a violation of any of the provisions of the Protective Overlay, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the zoning is null and void.

**SECTION 2.** That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

**ADOPTED AT WICHITA, KANSAS,** July 7, 2009.

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Carl Brewer - Mayor

**ATTEST:**

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Karen Sublett, City Clerk

(SEAL)

Approved as to form:

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Gary E. Rebenstorf, City Attorney

**DEDICATION**

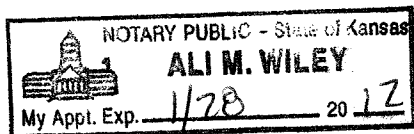
KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Beran Properties, LLC, Being the owner of the following described real estate in Sedgwick County, Kansas, to-wit:

**That part of Lot 1, Block 1, Oak Knoll 3<sup>rd</sup> Addition, Wichita, Sedgwick County, Kansas, described as beginning at the N.E. Corner of said Lot 1; thence west, along the north line of said Lot 1, 45 feet; thence southeasterly 45.37 feet to a point on the east line of said Lot 1, said point being 6 feet south of the N.E. Corner of said Lot 1; thence north, along the east line of said Lot 1, 6 feet to the place of beginning.**

Do hereby dedicate the above-described real estate to the public for Street purposes.

Executed this 29<sup>th</sup> day of May, 2009.



Kenneth Beran Beran Properties, LLC  
President  
Kenneth Beran

STATE OF KANSAS            )  
  ) SS  
SEDGWICK COUNTY        )

BE IT REMEMBERED, that on this 29<sup>th</sup> day of May, 2009 came Kenneth Beran, President of Beran Properties, LLC to me personally known to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My App't. Expires: 1/28/2012 Ali M Wiley Notary Public

**NOTICE OF PROTECTIVE OVERLAY**

THIS NOTICE made this 29<sup>th</sup> day of May, 2009, by Beran Properties, LLC hereinafter called "Declarants",

WITNESSETH

WHEREAS, Declarants are the owners of the following-described property:

Lot 1, Block 1, Oak Knoll 3<sup>rd</sup> Addition,  
Wichita, Sedgwick County, Kansas

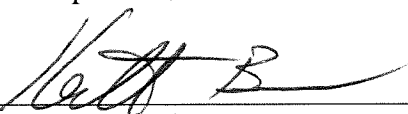
and

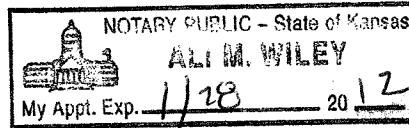
WHEREAS, Declarants are desirous to file notice that a zoning protective overlay approved by the Wichita City Council is on file with the Wichita-Sedgwick County Metropolitan Area Planning Department, located on the 10th Floor, City Hall, Wichita, Kansas, (316) 268-4421.

NOW, THEREFORE, the Declarant gives notice that the approved protective overlay (P-O #231) per zone change case ZON2009-00011 has placed restrictions on the use and requirements of the development of the above-described real property. This protective overlay shall be binding on the owners, their heirs, or successors or assigns and is a document running with the land and is binding on all successors in title to Lot 1, Block 1, Oak Knoll 3<sup>rd</sup> Addition, Wichita, Sedgwick County, Kansas.

EXECUTED the day and year first written above.

Beran Properties, LLC

  
\_\_\_\_\_. President  
Kenneth Beran



Notice of Protective Overlay  
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STATE OF KANSAS )  
COUNTY OF SEDGWICK ) SS:

BE IT REMEMBERED, that on this 29<sup>th</sup> day of May, 2009, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, Kenneth Beran, President of Beran Properties, LLC personally known to me to be the same person who executed the within instrument of writing.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

(My Appointment Expires: 1/28/2012)

en. Ali M. Wey  
Notary Public



**INTEROFFICE  
MEMORANDUM**

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**TO:** MAPC Members

**FROM:** Antione Sherfield, Neighborhood Assistant, District II

**SUBJECT:** **ZON2009-00011: City Zone Change From “GO” General Office to “LI” Limited Industrial.**

**DATE:** April 7, 2009

On Monday, April 6, 2009, the District II Advisory Board considered a zoning change request located Southeast of the junction of Oak Knoll Street and Pawnee Avenue, approximately 1/3 mile east of Rock Road.

The applicant is requesting consideration for LI Limited Industrial (“LI”) zoning for the GO General Office (“GO”) zoned, 3.8-acre, undeveloped Lot 1, Block 1, Oak Knoll 3<sup>rd</sup> Addition. The applicant owns the western, abutting, 3.72-acre, LI zoned, Lot 1, Block A, Bray Lines 2<sup>nd</sup> Addition; recorded 6-19-1984. This abutting western property is developed as the applicant’s contractor’s yard; SCZ0493, “R-1” Suburban Residential to “E” Light Industrial, approved 11-04-1981. This contractor’s yard has an office, warehouses/garages, outdoor storage of concrete forms, rebar, ties, fuel, chemicals, sand, gravel, trucks, scoops, and other equipment and materials needed for the business of forming concrete walls and other concrete products. The proposed rezoning would allow the applicant to expand their business. The applicant has built a 6-8 foot masonry wall along the subject site’s east and south sides. The applicant has also placed a 6-8 foot masonry wall separating the subject site’s north ¼ from the south ¾ of the site.

Property abutting and adjacent to the site on its west and north (across Oak Knoll Street) sides are zoned LI and OW Office – Warehouse (“OW”). Besides the applicant’s LI zoned contractors yard, there is a Durham school bus staging yard, gas storage tanks (probably the oldest development in the area), an electrical substation, self storage warehouse and platted (1999), undeveloped land. A SF-5 Single-family Residential (“SF-5”) zoned, developed, single-family residential subdivision (Oak Knoll Addition, recorded 10-31-1979) abuts the south side of the site. A MF-29 Multi-family Residential (“MF-29”) zoned condo development (Oak Knoll Addition, recorded 10-31-1979) abuts the site’s east side. The southern abutting residential development existed prior to the applicant’s existing contractor’s yard. There are MF-29 and TF-3 Duplex (“TF-3”, platted mid 1970s) zoned duplexes located north of the site, across Pawnee Avenue.

**CASE HISTORY:** The subject site was rezoned from “AA” One Family to “A” Two Family, subject to platting, August 14, 1979. The subject site was platted as Lot 1, Block 1, Oak Knoll Addition and recorded with the Register of Deeds October 31, 1979. The site was annexed into the City between 1971 and 1980. The site was rezoned from “R-6” General Residential to “BB” Office February 13, 1995. The BB zoning request was approved, with the observation that it would serve as a transitional zoning between the existing residential development on its south and east sides and the existing contractor’s yard, gas storage businesses and other existing industrial uses west and north of it, along Rock Road and Oak Knoll Street. The site was replatted as the Oak Knoll 3<sup>rd</sup> Addition, recorded with the Register of Deeds July 29, 1999. Since subject site was first platted in 1979, it has never been developed.

**ADJACENT ZONING AND LAND USE:**

NORTH:	OW, MF-29, TF-3	Undeveloped, duplexes, self storage warehouse electrical substation
SOUTH:	SF-5, LI	Single-family residences, undeveloped,
EAST:	MF-29, SF-5	condos, single-family residences
WEST: LI		contractors yard, school bus staging yard, gas storage tanks

**The DAB members voted (9-0) to approve the Planning Department's recommendation subject to the following changes:**

- **Height of materials storage 8ft.**
- **Landscaping - increase density**
- **Limited access**
- **Dedication of Right of Way - remove without negotiating compensation**
- **Any limited manufacturing is to be conducted indoors**
- **No machine shop to be allowed**

Antione Sherfield  
Neighborhood Assistant  
District II



## EXCERPT OF THE APRIL 9, 2009 MAPC HEARING

**Case No.: ZON2009-11** –Beran Properties, LLC (applicant/owner), Savoy Company, P.A., c/o Mark Savoy Request City zone change from GO General Office to LI Limited Industrial on property described as:

Lot 1, Block 1, Oak Knoll 3rd Addition to Wichita, Sedgwick County, Kansas, generally located southeast of the junction of Oak Knoll Street and Pawnee Avenue, approximately 1/3 mile east of Rock Road.

**BACKGROUND:** The applicant is requesting consideration for LI Limited Industrial (“LI”) zoning for the GO General Office (“GO”) zoned, 3.8-acre, undeveloped Lot 1, Block 1, Oak Knoll 3<sup>rd</sup> Addition. The applicant owns the western, abutting, 3.72-acre, LI zoned, Lot 1, Block A, Bray Lines 2<sup>nd</sup> Addition; recorded 6-19-1984. This abutting western property is developed as the applicant’s contractor’s yard; SCZ0493, “R-1” Suburban Residential to “E” Light Industrial, approved 11-04-1981. This contractor’s yard has an office, warehouses/garages, outdoor storage of concrete forms, rebar, ties, fuel, chemicals, sand, gravel, trucks, scoops, and other equipment and materials needed for the business of forming concrete walls and other concrete products. The proposed rezoning would allow the applicant to expand their business. The applicant has built a 6-8 foot masonry wall along the subject site’s east and south sides. The applicant has also placed a 6-8 foot masonry wall separating the subject site’s north ¼ from the south ¾ of the site.

Property abutting and adjacent to the site on its west and north (across Oak Knoll Street) sides are zoned LI and OW Office – Warehouse (“OW”). Besides the applicant’s LI zoned contractors yard, there is a Durham school bus staging yard, gas storage tanks (probably the oldest development in the area), an electrical substation, self storage warehouse and platted (1999), undeveloped land. A SF-5 Single-family Residential (“SF-5”) zoned, developed, single-family residential subdivision (Oak Knoll Addition, recorded 10-31-1979) abuts the south side of the site. A MF-29 Multi-family Residential (“MF-29”) zoned condo development (Oak Knoll Addition, recorded 10-31-1979) abuts the site’s east side. The southern abutting residential development existed prior to the applicant’s existing contractor’s yard. There are MF-29 and TF-3 Duplex (“TF-3”, platted mid 1970s) zoned duplexes located north of the site, across Pawnee Avenue.

**CASE HISTORY:** The subject site was rezoned from “AA” One Family to “A” Two Family, subject to platting, August 14, 1979. The subject site was platted as Lot 1, Block 1, Oak Knoll Addition and recorded with the Register of Deeds October 31, 1979. The site was annexed into the City between 1971 and 1980. The site was rezoned from “R-6” General Residential to “BB” Office February 13, 1995. The BB zoning request was approved, with the observation that it would serve as a transitional zoning between the existing residential development on its south and east sides and the existing contractor’s yard, gas storage businesses and other existing industrial uses west and north of it, along Rock Road and Oak Knoll Street. The site was replatted as the Oak Knoll 3<sup>rd</sup> Addition, recorded with the Register of Deeds July 29, 1999. Since subject site was first platted in 1979, it has never been developed.

### **ADJACENT ZONING AND LAND USE:**

NORTH:	OW, MF-29, TF-3	Undeveloped, duplexes, self storage warehouse electrical substation
SOUTH:	SF-5, LI	Single-family residences, undeveloped,
EAST:	MF-29, SF-5	Condos, single-family residences
WEST:	LI	Contractors yard, school bus staging yard, gas, storage tanks

**PUBLIC SERVICES:** Municipal water and sewer services are available to this site. Oak Knoll Street merges with Pawnee Avenue along the north side of the subject site. Oak Knoll /Pawnee are classified as minor arterials at this location. Oak Knoll is a paved two lane road with bar ditches running on either side of it. Oak Knoll has 50 feet of half street right-of-way; the current standard is 60 feet. Pawnee is a curbed, paved 4-lane street at this location.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan designates the site as appropriate for “Urban Residential” development. The Urban Residential category includes all housing types found in the municipality. The LI zoning request does not match the Urban Residential category. The Land Use Guide designates properties abutting and adjacent to the site as appropriate for “Processing Industry” (west side of site) and (north, across Oak Knoll) “Employment/ Industry Center.”

The Processing Industry category’s uses are those associated with primary extraction, processing or refinement of natural resources or recycling of waste materials, service or non-institutional nature. The range of uses includes aggregate and concrete plants, refineries, slaughterhouses, rendering and primary agricultural processing plants, salvage and recycling yards.

The Employment/Industry Center category’s uses constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The proposed LI zoning is being requested for expansion of the applicant’s contractor’s yard, thus it is not at odds with this classification.

Industrial location guidelines state that: (a) Industrial areas should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports and as extensions of existing industrial uses; (b) Industrial traffic should not feed directly into local streets in residential areas; (c) Industrial uses should be generally located away from existing or planned residential areas and sited so as not to generate industrial traffic through less intensive land use areas. The subject site has direct access to a minor arterial, Oak Knoll Street, from which it can get to Rock Road, a major arterial, or Pawnee Avenue, a minor arterial at this location. There are existing industrial uses, the gas storage tanks, which have been in this area prior to the residential development. None of the development along this portion of Oak Knoll is residential, office or commercial; self storage warehouse, electrical substation, the applicant’s contractor’s yard, bus storage/staging yard, and the previously mentioned gas storage tanks, thus the proposed zone change is not introducing a new use. Traffic from the site will not be using any local roads. The site does meet the location criteria for an industrial development; with the exception that there is existing residential development abutting its south and east sides. The single-family development was in place prior to the applicant’s contractor yard.

**RECOMMENDATION:** The applicant’s request will allow expansion of an existing business, onto property that has remained undeveloped for 30-years, i.e., at least since the time of its original platting in 1979. The gas storage tanks, located west of the site along Rock Road, appear to be the oldest development in the area, dating back to at least the mid 1950s. These storage tanks established an industrial use in the area before subsequent development around it. The single-family residential development, abutting the subject site’s south side, was established prior to the applicant’s contractor’s yard, which will expand onto the subject site, if the requested zoning is approved. Balancing the request to expand an existing business plus develop land that has been vacant for at least 30-years while protecting the earlier developed single-family residences and the condo development is critical. Typically the MAPC considers supporting the expansion of existing businesses, while being aware of protecting the

property values and character of the existing neighborhood. With that in mind, staff recommends APPROVAL of the zoning request with the following provisions of a Protective Overlay:

- (a) Provide a 25-foot setback, open space, landscape buffer on the south and east sides of the subject site, where it abuts the existing residential developments. No paving, storage, parking, or placement of equipment, trucks, bob cats, chemicals, fuels, sand, gravel, forms, rebar, ties, or any materials or products within the 25-foot setbacks, open space, landscape buffer. No trash receptacle placed within the 25-foot setbacks, open space, landscape buffer. No operation of power equipment within the 25-foot setbacks, open space, landscape buffer with the intent to maximize the distance between them and the residences located south and east of the site, thus reducing the impact of noise. Operation of power equipment shall be within the interior of the site
- (b) No stacking of materials higher than 15 feet. All dirt, gravel or sand stored on the site will be watered to control dust.
- (c) Compatibility height standards are in effect, starting at 35 feet with a maximum height of 50 feet.
- (d) No bay doors on buildings allowed on their south or east walls.
- (e) Parking of trucks and motorized equipment on the site will be in the interior of the site, with the intent to maximize the distance between them and the residences located south and east of the site, thus reducing the impact of noise. All parking and storage areas will be per City Code; gravel for the areas where there is the storage of equipment and materials, paving for any drives and circulation aisles into the storage areas. The gravels areas will be watered, as needed, to control dust.
- (f) The following uses are permitted: Church/place of worship, college/university, community assembly, limited and general convalescent care, limited and general day care, government service, hospital, library, limited animal care, automated teller machine, bank/financial institution, car wash, construction sales and service, convenience store, medical service, monument sales, nurseries and garden centers, general office, personal care service, personal improvement, post office substation, limited printing and copying, restaurant, general retail, second hand store, service station, general and limited vehicle repair, self service storage warehouse, limited manufacturing, warehousing, welding or machine shop and whole sale business services.
- (g) All lights must be no taller than 15 feet, including the base, hooded to direct light onto the site, away from residential property and no lights shall be placed within the 25-foot setbacks, open space, landscape buffer.
- (h) Landscaping shall be 1 ½ times the minimum required by the Landscape ordinance. Landscaping shall be a mix of approved medium to large deciduous trees and evergreens. Provide a landscape plan prepared by a licensed landscape architect, to be reviewed and approved by Planning prior to the Ordinance being published. The landscape plan shall include how the landscaping shall be maintained. All planting must be done within a year of approval by the governing body.
- (i) Keep the solid masonry screening wall, along the east and south sides of the subject site and shall be maintained in good repair.
- (j) No outside speakers/amplification
- (k) Dedicate 10 feet of ROW. Provide the dedication prior to the Ordinance being published.
- (l) The site shall be developed and operated in conformance with all applicable local, state and federal codes.
- (m) If the Zoning Administrator finds that there is a violation of any of the provisions of the Protective Overlay, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the zoning is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property abutting and adjacent to the site on its west and north (across Oak Knoll Street) sides are zoned LI and OW Office – Warehouse (“OW”). Besides the applicant’s LI zoned contractors yard, there is a Durham school bus staging yard, gas storage tanks (probably the oldest development in the area), an electrical substation, self storage warehouse and platted (1999), undeveloped land. A SF-5 Single-family Residential (“SF-5”) zoned, developed, single-family residential subdivision (Oak Knoll Addition, recorded 10-31-1979) abuts the south side of the site. A MF-29 Multi-family Residential (“MF-29”) zoned condo development (Oak Knoll Addition, recorded 10-31-1979) abuts the site’s east side. The southern abutting residential development existed prior to the applicant’s existing contractor’s yard. There are MF-29 and TF-3 Duplex (“TF-3”, platted mid 1970s) zoned duplexes located north of the site, across Pawnee Avenue.
2. The suitability of the subject property for the uses to which it has been restricted: The subject site was rezoned from “AA” One Family to “A” Two Family, subject to platting, August 14, 1979. The site was again rezoned, this time from “R-6” General Residential to “BB” Office February 13, 1995. The BB zoning request was approved, with the observation that it would serve as a transitional zoning between the existing residential development in the area and the existing contractor’s yard, gas storage businesses and other existing industrial uses along Rock Road and Oak Knoll Street, while allowing more opportunities for the site to develop. The existence of the earlier industrial types of uses appears to have discouraged development of the site as residential. Location along Oak Knoll Street appears to offer poor visibility for office. Since subject site was first platted in 1979, it has never been developed.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Balancing the request to expand an existing business plus develop land that has been vacant for at least 30-years, while protecting the earlier developed single-family residences and the condo development is critical. The provisions of the proposed Protective Overlay (PO) are intended to provide protection for the earlier developed residential properties, while allowing the expansion of an existing business. Issues the PO attempts to address include noise, dust and the visual impact of a contractor’s yard abutting an earlier developed single-family residential neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan designates the site as appropriate for “Urban Residential” development. The Urban Residential category includes all housing types found in the municipality. The LI zoning request does not match the Urban Residential category. The Land Use Guide designates properties abutting and adjacent to the site as appropriate for “Processing Industry” (west side of site) and (north, across Oak Knoll) “Employment/ Industry Center.”

The Processing Industry category’s uses are those associated with primary extraction, processing or refinement of natural resources or recycling of waste materials, service or non-institutional nature. The range of uses includes aggregate and concrete plants, refineries, slaughterhouses, rendering and primary agricultural processing plants, salvage and recycling yards. The gas storage and the electrical substation reflect the uses associated with this category.

The Employment/Industry Center category’s uses constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The proposed LI zoning is being requested for expansion of the applicant’s contractor’s yard, thus it is not at odds with this classification.

Industrial location guidelines state that: (a) Industrial areas should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports and as extensions of existing industrial uses; (b) Industrial traffic should not feed directly into local streets in residential areas; (c) Industrial uses should be generally located away from existing or planned residential areas and sited so as not to generate industrial traffic through less intensive land use areas. The subject site has direct access to a minor arterial, Oak Knoll Street, from which it can get to Rock Road, a major arterial, or Pawnee Avenue, a minor arterial at this location. There are existing industrial uses, the gas storage tanks, which have been in this area prior to the residential development. None of the development along this portion of Oak Knoll is residential, office or commercial; self storage warehouse, electrical substation, the applicant's contractor's yard, bus storage/staging yard, and the previously mentioned gas storage tanks, thus the proposed zone change is not introducing a new use. Traffic from the site will not be using any local roads. The site does meet the location criteria for an industrial development; with the exception that there is existing residential development abutting its south and east sides. The single-family development was in place prior to the applicant's contractor yard.

5. Impact of the proposed development on community facilities: There will be an increase of truck traffic generated by the expanded contractor's yard and the subsequent toll on the road surface. Oak Knoll already has a high number of large vehicles on it, with the bus staging yard providing a significant number of trips during the morning and evening hours. The impact on public water and sewer should be minimal.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**LONGNECKER** reported that DAB II agreed with staff recommendations and added some additional recommendations to the Protective Overlay (PO), including the following: Condition (f) removing welding or machine shop from permitted uses and that any limited manufacturing be conducted in-doors; (h) increase density of landscaping to a minimum of every 20 ft; (b) no stacking of materials higher than 8 feet and removal of the requirement for dedication of right-of-way. He said the applicant has met with the City Traffic Engineer and it was agreed to continue the current curve of Pawnee into Oak Knoll with dedication of 10 foot right-of-way.

**LONGNECKER** said several people protested the application at the DAB meeting. He said at that time, the applicant met with neighborhood residents and they seemed to have come to a common agreement with the changes outlined in the revised PO provisions. He said the DAB unanimously approved the request, with the changes in the PO.

**FOSTER** referred to page 4, item (a) of the Protective Overlay and requested that the term "bob cats" be changed to skid steers, since Bob Cat was a specific brand of skid steers.

**MARK SAVOY, REPRESENTING THE APPLICANT, MR. KEN BERAN AND KEN WEBER, BERAN PROPERTIES, LLC** said they are in agreement with staff comments as amended by DAB II and the neighbors.

**LARRY STAWAR, 6510 E. 29<sup>TH</sup> ST. N, #1002** said he owned property at the multi-family complex nearby. He said he disagrees with having housing right next to Limited Industrial (LI) and asked if there was a lesser zoning that could accomplish the goals of the business. He said this proposal could limit the ability of people living in area to obtain a loan at a reasonable rate and also mentioned devaluation of properties adjacent to the site. He said that he is also concerned about debris blowing, and added that material was stacked higher than the 8-foot wall not that long ago. He asked what else could happen if

this company had financial problems and sold the property. He asked if a rendering plant could go in there or does this revert back to the original General Office (GO) zoning. He said Berans has been cooperative in building walls in the past, but also mentioned the sound of trucks backing up and the beeping. He asked about accountability and who they could contact if materials were stacked beyond 8 foot. He mentioned the additional landscaping, but added that it will take 10-15 years for trees and shrubs to grow in the area. He said his main concern was what future industry could be located at the site if the current owners sell out to an asphalt plant or meat packing plant. He said that would devalue their property values even more.

**PATTY LEMAY, 10494 SW TAWAKONI, AUGUSTA** said she is the manager of the condos and also owns property at the Highlands. She mentioned that the Berans has been cooperative and have compromised with them, but added that the neighbors haven't had a chance to fully explore the proposal or make their needs known other than the 5 minutes they spoke with Berans in the hall at the DAB meeting. She said she has received numerous calls and has done limited research because they just received the Staff Report on Friday before the DAB meeting. She said they believe this proposal represents a detriment to their residential neighborhood. She said the major concerns regarding the zoning change is that it will expose the complex to noise, blowing dirt, and sand and present unattractive views from balcony's and windows. She said this will also cause the value of their homes to fall and make it more difficult to get a loan on their property. She said there are 66 condominiums with 150 residents at the Highlands. She said this neighborhood should not be impacted by a zoning change to benefit a business. She said they would like to protect the peace and quiet of the neighborhood and commented that Berans bought the property with the current zoning and that they were aware it was next door to a residential area. She also voiced concern about home prices right next to an industrial area and said they have received mixed information on this. She said a DAB member told them property devaluation would not be a factor with residential and limited industrial adjacent to each, but since then she has spoken to a couple of banks and other lending institutes and was told that would affect housing prices and loan ability on the property. She said she was told that with industrial zoning right next door, lenders will be less likely to loan and/or require more of a down payment. She said they get debris from blowing dirt and sand, asphalt, and sound and truck noise, and a view of an industrial yard from their upstairs decks and balconies. She also asked about accountability and who they would call at the City and/or Berans if there are any infractions on the conditions agreed to. She asked do they have to have proof of an infraction and what kind of a response can they expect. She asked if Berans was actually going to leave someone out there to water down sand on windy Kansas days. She said the landscape buffer is great, but it takes a long time for trees to grow and fill out and in the winter trees lose their leaves anyway.

**MOTION:** To give the speaker one additional minute.

**HILLMAN** moved, **SHERMAN** seconded the motion, and it carried (11-0).

She said they are also concerned about future industry because the zoning change opens the area up to that. She said they feel like their neighborhood is being singled out as an unimportant Wichita neighborhood allowed to bear the brunt of this zoning change. She asked if rezoning to LI would be permitted in other residential neighborhoods in the City such as College Hill or Brook Hollow. She concluded by asking does any family deserve to have their quiet home setting changed because of business convenience. She asked if anyone in the audience would welcome a concrete plant next door to their home.

**CLETIS CARY, 1113 POST OAK ROAD, DERBY** said he is President of the Highlands Home Owners Association. He said he had a petition signed by 40 of the people in the neighborhood who are concerned about this proposal being passed.

**DAVE STEWART, 2405 S. CAPRI, #101** said he has lived at the Highlands since 2004 and is currently serving on the Home Owners Association Board. He said he chose a condo for many reasons and the Highlands because of the area and the peacefulness of the community. He said he has serious concerns that peace will be interrupted because of this proposal. In addition, he said he may have trouble selling his condo in the future if this zoning is approved. He asked the Commissioners to please consider the needs of the residents in the area as they make their decision on this proposal.

**KELLY FRASER, 736 N. LAKESIDE DRIVE, ANDOVER** said she is a partial property owner at the Highlands. She asked if the drastic change to LI can't be compromised to a lower zoning. She said LI zoning opens up the area for potential problems in the future. She said Berans knew how the property was zoned GO when they purchased it. She said this entire parcel surrounds the neighborhood and they have to put up with the noise, wind, debris and sand that hurts the paint on their houses and cars.

**MARK SAVOY** said he was a little bit surprised after the revisions to the PO and unanimous approval by the DAB, they thought they had the problems solved and answered. He said the purpose of the rezoning request was so that Berans could build a warehouse so that all equipment could be housed inside. He said they believe they have toned down the zoning with the PO, which almost reduces the uses to Limited Commercial (LC). He said they would like to explore the possibility of retail uses on the North end of the property and wanted a little flexibility. He said everything they are currently doing on the site meets code, and that they would eventually like to put the entire area under concrete which will reduce the debris. He said currently they don't build or make products on site, that it is simply a contractor's yard. They come in the morning, get their equipment and leave and take it to the work site.

**MOTION:** To give the speaker two additional minutes.

**HILLMAN** moved, **SHERMAN** seconded the motion, and it carried (11-0).

He said the applicant has also agreed to do heavier landscaping and put in more mature trees or larger caliper trees than would normally be required.

**KENT WEBER, 8401 E. OAK KNOLL, VICE PRESIDENT OF BERAN CONCRETE, APPLICANT** said he believes the neighbors, who have been extremely nice, need to know that the zoning to LI with the PO will endure even if they (Berans) pack up and leave and sell the site to someone else. He said the zoning and PO will stay intact. He said they have hired a Landscape Architect to put a plan together for more landscaping than is required and have invited several members of the home owners association to help them with that. He said they intend to have LI zoning on both sides of the parcel but added that they don't want to impact the neighborhood. He said their insulated buildings are set to the south and the crews work within them. He said they have even put the doors on the north side to abate sound.

**MOTION:** To give the speaker one additional minute.

**HILLMAN** moved, **JOHNSON** seconded the motion, and it carried (11-0).

He said they plan to add an 80' x 140' building to the east and build a sound and dust buffer. He said one of the issues at the DAB was a pile of material on the east lot that was too high. He said that pile is now under eight feet. He said they are also working on the water system to keep the dust down. He said there is a crew assigned to keep the concrete paving swept. He said the PO also dictates that travel surfaces be rigid pavement. He concluded by saying that it is not in their best interest to be at odds with the neighbors and added that as far as accountability is concerned, call him.

**MCKAY** commented that there are a lot of other businesses that can operate with the PO if they should sell or go somewhere else including, but not limited to: limited animal care, limited vehicle repair, and welding and machine shop.

**WEBER** said he believed welding and machine shop were excluded at the DAB meeting.

**LONGNECKER** clarified that welding and machine shop were removed from the PO at the DAB meeting. He added that vehicle repair general was left in, but with the provision that it be conducted inside a building.

**MCKAY** asked why?

**LONGNECKER** responded that was the agreement reached with the applicant.

## **TAPE 1, SIDE 2**

**MCKAY** said he wanted to address concerns people have if the current owner sells the property. He asked why the PO wasn't limited to what the applicant said he was going to use it for which was his business.

**LONGNECKER** said if the business does sell, they would like to have the property re-occupied. He said if the Planning Commission finds the uses staff has recommended are a nuisance and/or degrade the value of the property, they have the discretion to recommend that those uses be taken off of the PO.

**MCKAY** asked why not go with a Conditional Use Permit instead of changing the zoning.

**LONGNECKER** said the applicant was looking at some possible retail uses that are not permitted in Office Warehouse (OW) zoning.

**MCKAY** asked if the LI zoning affected that.

**LONGNECKER** explained that LI zoning allows some retail uses that are not permitted in OW zoning. He said the applicant was looking at possible retail uses on the north quarter of the property. He said right now they are looking at expansion of their construction yard into the south  $\frac{3}{4}$  of the property.

**MCKAY** said the presentation and Staff Report refer to what this business wants to do. He said it still doesn't address the neighbor's main concerns.

**MILLER** commented that another option discussed was LI zoning with a PO limiting it to construction sales and service and then all uses permitted in the GO district. He said that didn't address the applicant's needs for development of the northern end of the property.

**MCKAY** asked the applicant if they would agree to that.

There was discussion that GO zoning did not include any retail uses.

**MCKAY** asked about a Conditional Use with retail uses.

**GOLTRY** said under a GO zoning retail uses were limited to personal care and animal care only.



**CHAIRMAN DOWNING** asked the applicant if that was acceptable to them.

**WEBER** said they would have to discuss that.

**SAVOY** said the neighbors are concerned that if Berans sells the site that it could become a hog rendering plant, or asphalt or rock crushing plant and those uses are already eliminated by the PO. He said some of the things they are concerned have already been eliminated.

**MCKAY** said the proposed purpose of the zoning change was to expand the business, not set up a Planned Unit Development (PUD) or Community Unit Plan (CUP). He said either expand the business only or set up a PUD or CUP, and not leave the neighbors in the lurch.

**SAVOY** commented that they do have a desire to be able to do something different on the north end of the property that wasn't industrial.

**MCKAY** asked about a lot split and doing a different zoning on one end. He mentioned he was having a tough time with this proposal as submitted.

**SAVOY** commented that the applicant's main concern was to be able to use the area as a warehouse to store equipment inside. He said they are also looking for a little flexibility.

**MCKAY** said they just said they wanted to use it for something else. He suggested they zone it based on their need for retail use.

**CHAIRMAN DOWNING** commented that he didn't think they were going to resolve this at this meeting. He brought the matter back to the Commission for discussion and/or comments. He also suggested that the item be deferred for a couple of weeks so that staff and the property owner can refine some of the proposed uses.

**MOTION:** To defer this until staff and the owner have time to re-work issues.

**DOWNING** moved, **HILLMAN** seconded the motion.

**JOHNSON** said he could not support the motion and said that the applicant had already done what the DAB had asked him to do. He said the DAB voted unanimously to approve the proposed zoning request with the revised PO. He also noted that the Commission usually supports expansion of businesses.

**JOHNSON MADE A SUBSTITUTE MOTION:** To approve subject to staff recommendation and changes made by DAB II.

**JOHNSON** moved, **DENNIS** seconded the motion, and it failed (7-4). **ANDERSON, DOWNING, FARNEY, HENTZEN, HILLMAN, MCKAY, SHERMAN** – No.

**THE ORIGINAL MOTION TO DEFER** was then voted on and it carried (11-1). **JOHNSON** voting no.

## EXCERPT OF THE MAY 21, 2009 MAPC HEARING

**Case No.: ZON2009-11** - Beran Properties, LLC (applicant/owner), Savoy Company, PA, c/o Mark Savoy, request City zone change from GO General Office ("GO") to OW Office Warehouse ("OW") on property described as:

Lot 1, Block 1, Oak Knoll 3rd Addition to Wichita, Sedgwick County, Kansas; generally located southeast of the of Oak Knoll Street and Pawnee Avenue intersection, approximately 1/3 mile east of Rock Road.

**BACKGROUND:** The applicant originally requested consideration for LI Limited Industrial ("LI") zoning, with a Protective Overlay (PO), for Lot 1, Block 1, Oak Knoll 3<sup>rd</sup> Addition. The subject site is a 3.8-acre, undeveloped, GO General Office ("GO") zoned property. At the April 6, 2009, DAB II meeting, the requested LI zoning was approved with changes to the PO. At the April 9, 2009, MAPC hearing, the MAPC deferred a recommendation on the zone change, directing the applicant to meet with protesters from the abutting residential neighborhoods in an attempt to resolve the issues associated with the zone change. The applicant has met with the neighborhood and the result is that the applicant is now requesting OW Office Warehousing ("OW") zoning with a revised PO.

The applicant owns the western, abutting, 3.72-acre, LI zoned, Lot 1, Block A, Bray Lines 2<sup>nd</sup> Addition; recorded on 6-19-1984. This abutting western property is developed as the applicant's concrete contractor's yard; SCZ0493, "R-1" Suburban Residential to "E" Light Industrial, approved on 11-04-1981. This contractor's yard has an office, warehouses/garages, outdoor storage of concrete forms, rebar, ties, fuel, chemicals, sand, gravel, trucks, scoops and other equipment and materials needed for the business of forming concrete walls and other concrete products. The proposed OW rezoning would allow the applicant to expand their business while eliminating some uses objected to by the neighborhood. The applicant has built an 8-foot masonry wall along the subject site's east and south sides. The applicant has also placed an 8-foot tall masonry wall separating the subject site's north ¼ from the south ¾ of the site.

Property abutting and adjacent to the site on its west and north (across Oak Knoll Street) sides are zoned LI and OW. Besides the applicant's LI zoned contractor's yard, there is a Durham school bus staging yard, gas storage tanks (probably the oldest development in the area), an electrical substation, self storage warehouse and platted (1999), undeveloped land. A SF-5 Single-family Residential ("SF-5") zoned, developed, single-family residential subdivision (Oak Knoll Addition, recorded 10-31-1979) abuts the south side of the site. A MF-29 Multi-family Residential ("MF-29") zoned condo developments (Oak Knoll Addition, recorded 10-31-1979) abuts the site's east side. The southern abutting residential development existed prior to the applicant's existing contractor's yard. There are MF-29 and TF-3 Duplex ("TF-3," platted mid 1970s) zoned duplexes located north of the site, across Pawnee Avenue.

**CASE HISTORY:** The subject site was rezoned from "AA" One Family to "A" Two Family, subject to platting, August 14, 1979. The subject site was platted as Lot 1, Block 1, Oak Knoll Addition, and recorded with the Register of Deeds October 31, 1979. The site was annexed into the City between 1971 and 1980. The site was rezoned from "R-6" General Residential to "BB" Office February 13, 1995. The BB zoning request was approved, with the observation that it would serve as transitional zoning between the existing residential development on its south and east sides and the existing contractor's yard, gas storage businesses and other existing industrial uses west and north of it, along Rock Road and Oak Knoll Street. The site was replatted as the

Oak Knoll 3rd Addition, recorded with the Register of Deeds July 29, 1999. Since subject site was first platted in 1979, it has never been developed.

**ADJACENT ZONING AND LAND USE:**

NORTH:	OW, MF-29, TF-3	Undeveloped, duplexes, self storage warehouse electrical substation
SOUTH:	SF-5, LI	Single-family residences, undeveloped,
EAST:	MF-29, SF-5	condos, single-family residences
WEST:	LI	contractors yard, school bus staging yard, gas storage tanks

**PUBLIC SERVICES:** Municipal water and sewer services are available to this site.

Oak Knoll Street merges with Pawnee Avenue along the north side of the subject site. Oak Knoll /Pawnee are classified as minor arterials at this location. Oak Knoll is a paved two lane road with open ditches running on either side of it. Oak Knoll has 50 feet of half-street right-of-way; the current standard is 60 feet. Pawnee is a curbed, paved 4-lane street at this location.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan designates the site as appropriate for “Urban Residential” development. The Urban Residential category includes all housing types found in the municipality. The OW zoning request does not match the Urban Residential category. The Land Use Guide designates properties abutting and adjacent to the site as appropriate for “Processing Industry” (west side of site) and (north, across Oak Knoll) “Employment/ Industry Center.”

The Processing Industry category’s uses are those associated with primary extraction, processing or refinement of natural resources or recycling of waste materials, service or non-institutional nature. The range of uses includes aggregate and concrete plants, refineries, slaughterhouses, rendering and primary agricultural processing plants, salvage and recycling yards. The gas storage tanks are an example of this type of use.

The Employment/Industry Center category’s uses constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The proposed OW zoning for expansion of the applicant’s contractor’s yard is not at odds with this classification.

Industrial locational guidelines state that: (a) Industrial areas should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports and as extensions of existing industrial uses; (b) Industrial traffic should not feed directly into local streets in residential areas and (c) Industrial uses should be generally located away from existing or planned residential areas and sited so as not to generate industrial traffic through less intensive land use areas. The subject site has direct access to a minor arterial, Oak Knoll Street, from which it can get to Rock Road, a major arterial, or Pawnee Avenue, a minor arterial at this location. There are existing industrial uses, the gas storage tanks, which have been in this area prior to the residential development. None of the development along this portion of Oak Knoll is residential, office or commercial. The existing development includes self storage warehouse, electrical substation, the applicant’s contractor’s yard, bus storage/staging yard, and the previously mentioned gas storage tanks, thus the proposed zone change is not introducing a new use. Traffic from the site will not be using any local roads. The site does meet the locational criteria for an industrial development; with the exception that there is existing residential development abutting its south and east sides. The single-family

development was in place prior to the applicant's contractor yard.

**RECOMMENDATION:** The applicant's request will allow expansion of an existing business, onto property that has remained undeveloped for 30-years, i.e., at least since the time of its original platting in 1979. The gas storage tanks, located west of the site along Rock Road, appear to be the oldest development in the area, dating back to at least the mid 1950s. These storage tanks established an industrial use in the area before subsequent development around it. The single-family residential development, abutting the subject site's south side, was established prior to the applicant's contractor's yard, which will expand onto the subject site, if the requested zoning is approved. Balancing the request to expand an existing business plus develop land that has been vacant for at least 30-years while protecting the earlier developed single-family residences and the condo development is critical. Typically the MAPC considers supporting the expansion of existing businesses, while being aware of protecting the property values and character of the existing neighborhood. With that in mind, staff recommends APPROVAL of OW Office Warehouse ("OW") zoning with the following provisions of a Protective Overlay:

- (a) Retain the GO General Office zoning along the east and south 25 feet of Lot 1, Block 1, Oak Knoll 3rd Addition (subject site). This will serve as a 25-foot setback, open space, landscape buffer on the south and east sides of the subject site, where it abuts the existing residential developments.
- (b) No paving, storage, parking, or placement of equipment, including cars, trucks, graders, power shovels, skid steer, forklifts, chemicals, fuels, sand, gravel, forms, rebar, ties, hand tools or any materials or products within the 25-foot setbacks that serve as the open space, landscape buffer. No trash receptacles may be placed within the 25-foot setbacks that serve as the open space, landscape buffer, and all trash receptacles shall be screened.
- (c) No operation of power equipment is permitted within the 25-foot setbacks that serve as the open space, landscape buffer.
- (d) No stacking of materials higher than 7 feet is permitted. All dirt, gravel or sand stored on the site will be watered to control dust, and placed on the northwest end of the site, at a distance no greater than 200 feet south of Oak Knoll and 200 feet from the west property line and will be enclosed on three sides with solid screening.
- (e) The Unified Zoning Code's Compatibility height standards are in effect, except that no building shall exceed a maximum height of 50 feet.
- (f) No bay doors or openings on buildings are allowed on their south or east facing walls.
- (g) All vehicle repair shall be done inside existing or new buildings.
- (h) Parking of trucks and motorized equipment on the site will be no closer than 100 feet from the subject site's south side, where it abuts single-family residential development, and no closer than 50 feet around the rest of the subject site, where it abuts multifamily residential and/or condo development. All parking and storage areas will be per City Code; gravel for the areas where there is the storage of equipment and materials, paving for any drives and circulation aisles into the storage areas. The gravels areas will be watered, as needed, to control dust.
- (i) The following uses are permitted, except over the east and south 25 feet:  
College or University; Government Service; Community Assembly; Day Care, General; Library; Safety Service; Animal Care Limited; Automated Teller Machine; Bank or Financial Institution; Broadcast/Recording Studio; Construction Sales and Service; Farmer's Market in the City; Monument Sales; Nurseries and Garden Centers; Office, General; Personal Care Service; Personal Improvement Service; Post Office Substation; Printing and Copying, Limited; Retail General; Vocational School; Warehouse, Self-service Storage; Research Services; Warehousing; Wholesale or Business Services.

- (j) The limitation on outdoor storage contained in the OW district is waived. Materials that may be stored outside shall be limited to those associated with the uses permitted by this PO. Materials stored outside shall not occupy any setback or buffer areas established by this PO.
- (k) Lighting standards must be no taller than 15 feet, including the base, and be hooded to direct light onto the site, away from residential property. No lights shall be placed within the 25-foot setbacks that serve as the open space, landscape buffer.
- (l) A mix of evergreens, as listed in the landscape ordinance, shall be planted with a minimum height of two to three feet above the existing 8 foot concrete screening wall and planted on 16-foot centers, within the 25-foot setback, open space, landscape buffer, along the south and east sides of the subject site. Any replacement of dead evergreens would be per the same minimum height of two to three feet above the existing eight-foot concrete screening wall and will be done during the planting season when they died. The landscape plan shall be prepared by a licensed landscape architect, be reviewed and approved by the Planning Department prior to the ordinance being published. The landscape plan shall include an irrigation system for maintenance of the approved landscape. All planting and the irrigation system must be in place within the 2009 planting season.
- (m) The solid masonry screening walls, along the east, south and north sides of the subject site shall be retained and shall be maintained in good repair.
- (n) No outside speakers/amplification communication system capable of being heard beyond the applicant's property line shall be utilized.
- (o) The applicant shall dedicate 10 feet of ROW, as agreed by the applicant and the Traffic Engineer, along Oak Knoll, and provide proof of the dedication prior to the ordinance being published.
- (p) The site shall be developed and operated in conformance with all applicable local, state and federal codes.
- (q) If the Zoning Administrator finds that there is a violation of any of the provisions of the Protective Overlay, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the zoning is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property abutting and adjacent to the site on its west and north (across Oak Knoll Street) sides are zoned LI and OW Office Warehouse ("OW"). Besides the applicant's LI zoned contractors yard, there is a Durham school bus staging yard, gas storage tanks (probably the oldest development in the area), an electrical substation, self storage warehouse and platted (1999), undeveloped land. A SF-5 Single-family Residential ("SF-5") zoned, developed, single-family residential subdivision (Oak Knoll Addition, recorded 10-31-1979) abuts the south side of the site. A MF-29 Multi-family Residential ("MF-29") zoned condo development (Oak Knoll Addition, recorded 10-31-1979) abuts the site's east side. The southern abutting residential development existed prior to the applicant's existing contractor's yard. There are MF-29 and TF-3 Duplex ("TF-3", platted mid 1970s) zoned duplexes located north of the site, across Pawnee Avenue.
2. The suitability of the subject property for the uses to which it has been restricted: The subject site was rezoned from "AA" One Family to "A" Two Family, subject to platting, August 14, 1979. The site was again rezoned, this time from "R-6" General Residential to "BB" Office February 13, 1995. The BB zoning request was approved, with the observation that it would serve as a transitional zoning between the existing residential development in the area and the existing contractor's yard, gas storage businesses and other existing industrial uses along Rock Road and Oak Knoll Street, while allowing more opportunities for the site to develop. The existence of the earlier industrial types of uses appears to have discouraged development of the

site as residential. Location along Oak Knoll Street appears to offer poor visibility for office. Since subject site was first platted in 1979, it has never been developed.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Balancing the request to expand an existing business plus develop land that has been vacant for at least 30-years, while protecting the earlier developed single-family residences and the condo development is critical. The provisions of the proposed Protective Overlay (PO) are intended to provide protection for the earlier developed residential properties, while allowing the expansion of an existing business. Issues the PO attempt to address include noise, dust and the visual impact of a contractor's yard abutting an earlier developed single-family residential neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan designates the site as appropriate for "Urban Residential" development. The Urban Residential category includes all housing types found in the municipality. The LI zoning request does not match the Urban Residential category. The Land Use Guide designates properties abutting and adjacent to the site as appropriate for "Processing Industry" (west side of site) and (north, across Oak Knoll) "Employment/ Industry Center."

The Processing Industry category's uses are those associated with primary extraction, processing or refinement of natural resources or recycling of waste materials, service or non-institutional nature. The range of uses includes aggregate and concrete plants, refineries, slaughterhouses, rendering and primary agricultural processing plants, salvage and recycling yards. The gas storage and the electrical substation reflect the uses associated with this category.

The Employment/Industry Center category's uses constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The proposed LI zoning is being requested for expansion of the applicant's contractor's yard, thus it is not at odds with this classification.

Industrial locational guidelines state that: (a) Industrial areas should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports and as extensions of existing industrial uses; (b) Industrial traffic should not feed directly into local streets in residential areas and (c) Industrial uses should be generally located away from existing or planned residential areas and sited so as not to generate industrial traffic through less intensive land use areas. The subject site has direct access to a minor arterial, Oak Knoll Street, from which it can get to Rock Road, a major arterial, or Pawnee Avenue, a minor arterial at this location. There are existing industrial uses, the gas storage tanks, which have been in this area prior to the residential development. None of the development along this portion of Oak Knoll is residential, office or commercial; self storage warehouse, electrical substation, the applicant's contractor's yard, bus storage/staging yard, and the previously mentioned gas storage tanks, thus the proposed zone change is not introducing a new use. Traffic from the site will not be using any local roads. The site does meet the locational criteria for an industrial development; with the exception that there is existing residential development abutting its south and east sides. The single-family development was in place prior to the applicant's contractor yard.

5. Impact of the proposed development on community facilities: There will be an increase of truck traffic generated by the expanded contractor's yard and the subsequent toll on the road surface. Oak Knoll already has a high number of large vehicles on it, with the bus staging yard providing

a significant number of trips during the morning and evening hours. The impact on public water and sewer should be minimal.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**FOSTER** referred to Item C under conditions in the Staff Report and asked if mowers and other landscape equipment used for maintenance of the landscape buffer would be allowed.

**LONGNECKER** said that power tools used for maintenance of the landscape buffer would be added to C as an exception.

**MCKAY** asked if the applicant and neighbors had met and worked out their issues.

**LONGNECKER** said the applicant, the neighbors and staff had met at the applicant's site. The meeting resulted in the more restrictive OW zoning and the changes in the PO, which are reflected in the staff report. After that meeting staff had sent out a letter to all the participants of the meeting, everyone on the ownership list and to everyone who had signed up to speak at the first MAPC hearing on this case. The letter reflected the change in zoning, to OW, and the revised PO, as shown in today's staff report.

**MCKAY** thanked the applicant for meeting with the neighbors.

**MOTION:** To approve subject to staff recommendation.

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (12-0).

City of Wichita  
City Council Meeting  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** Petition to Renovate Building Facade in the Core Area (District I)

**INITIATED BY:** Office of Urban Development

**AGENDA:** Consent Agenda

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**Recommendation:** Approve the petition and adopt the resolution.

**Background:** In 2006, Real Development purchased the former mattress factory located at the southwest corner of St. Francis and William in Downtown Wichita and converted it to a 28-unit residential condominium property. All but two of condo units have been sold and are occupied. In 2008, heavy spring and summer rainfall caused rainwater to enter some condo units through cracks in the brick façade of the building, causing serious damage. The building is located adjacent to the Intrust Bank Arena, and it is believed that construction work on the arena may have contributed to cracks in the façade.

Some emergency repair work was completed on the building in the summer of 2008, but the entire building façade needs tuck-pointing to ensure it will remain water-tight on a long-term basis. The Lofts at St. Francis Homeowners Association has applied to the City's Façade Improvement Program to finance the needed façade repairs with special assessments. A petition signed by 100% of the condo owners has been submitted for this purpose.

**Analysis:** Under the recently approved changes to the policy and procedures for the Façade Improvement Program, special assessments must be levied against the benefiting property prior to starting the improvement project, by means of adoption of a maximum assessment ordinance following a public hearing. The attached resolution sets a public hearing for July 7, 2009.

The Homeowners Association has solicited competitive bids for the façade repair work from three qualified contractors, with the lowest bid being \$92,940. Allowing for a 10% contingency, 2% Public Works administrative fee and architectural/inspection costs, the total petition amount is \$112,620. Work completed prior to now is not included in the petition amount.

The recent changes to the guidelines for this program include a requirement that the amount of the façade program funding be at least match with private investment. This façade repair project does not include a concurrent private investment. However, when the property was redeveloped by Real Development in 2006, the private investment was many times the amount of the current façade project. The building is now appraised by Sedgwick County for over \$6,000,000. Because of this, the Homeowners Association requests the City consider the matching requirement to be fulfilled and waive the requirement for a new appraisal.

Another requirement is a financial analysis that demonstrates the need for public financing to complete the project. This project does not lend itself to this type of gap analysis; however, staff believes that conventional financing would be difficult to obtain for exterior repairs to a residential condominium property like this. Each individual condo owner would be required to fund a share of the cost.



**Financial Considerations:** The maximum assessment amount is \$112,620. The actual amount to be assessed to the property, not to exceed \$112,620, will be based on a final statement of costs following completion of construction and will be financed with 15-year special assessment G.O. bonds.

**Goal Impact:** This project addresses the Dynamic Core Area goal by facilitating improvements to a privately owned building in the Arena Neighborhood Redevelopment Plan area.

**Legal Considerations:** State Statutes provide the City Council authority to use special assessment funding for the project. The procedures for using a maximum assessment ordinance call for a public hearing to be held not less than 10 days following adoption of a resolution approving the façade improvement project and setting the public hearing. The attached resolution sets July 7, 2009 as the public hearing date.

**Recommendations/Actions:** It is recommended that the City Council approve the petition, adopt the resolution and authorize the necessary signatures.

**Attachments:** Petition and Resolution

First Published in the Wichita Eagle on June 30, 2009

RESOLUTION NO. 09-184

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING IMPROVEMENTS TO AREA WALLS ON PUBLIC WAY OR LAND ABUTTING PUBLIC WAYS CONSISTING OF FAÇADE IMPROVEMENTS TO THE PORTION OF 201 S. ST. FRANCIS THAT ABUTS PUBLIC WAYS, INCLUDING ST. FRANCIS AND WILLIAM STREETS IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING IMPROVEMENTS TO AREA WALLS ON PUBLIC WAY OR LAND ABUTTING PUBLIC WAYS CONSISTING OF FAÇADE IMPROVEMENTS TO THE PORTION OF 201 S. ST. FRANCIS THAT ABUTS PUBLIC WAYS, INCLUDING ST. FRANCIS AND WILLIAM STREETS IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing improvements to area walls on public way or land abutting public ways consisting of façade improvements to the portion of 201 S. St. Francis that abuts public ways, including St. Francis and William streets.

SECTION 2. That the estimated probable cost of the foregoing improvement is \$112,620, payable by the improvement district.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

Lots 14-16, 4<sup>th</sup> Now St. Francis Ave., English's Addition,  
a subdivision of Wichita, Sedgwick County, Kansas.

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a square foot basis.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 6. The approved estimated cost of the Improvements is the estimated cost of the Improvements as set forth in this Resolution. The Finance Director shall prepare a proposed assessment roll for the Improvements which shall set forth the proposed maximum assessment against each lot, piece or parcel of land within the improvement district for the Improvements in the manner set forth in this Resolution based on such estimated cost of the Improvements. The proposed assessment roll shall be maintained on file with the City Clerk and be open for public inspection. Following preparation of the proposed assessment roll, the Governing Body shall hold a public hearing on the proposed maximum assessments on July 7, 2009, or the first regularly scheduled City Council meeting thereafter after compliance with the notice provisions set forth in this paragraph. The City Clerk shall publish notice of the public hearing for the improvement district at least once not less than 10 days prior to the public hearing, and shall mail to the owner of the property liable to pay the assessments, at its last known post office address, a notice of the hearing and a statement of the maximum cost proposed to be assessed all in accordance with K.S.A. 12-6a09.

SECTION 7. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 8. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 23<sup>rd</sup> day of June, 2009.

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CARL BREWER, MAYOR

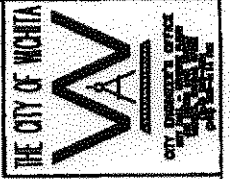
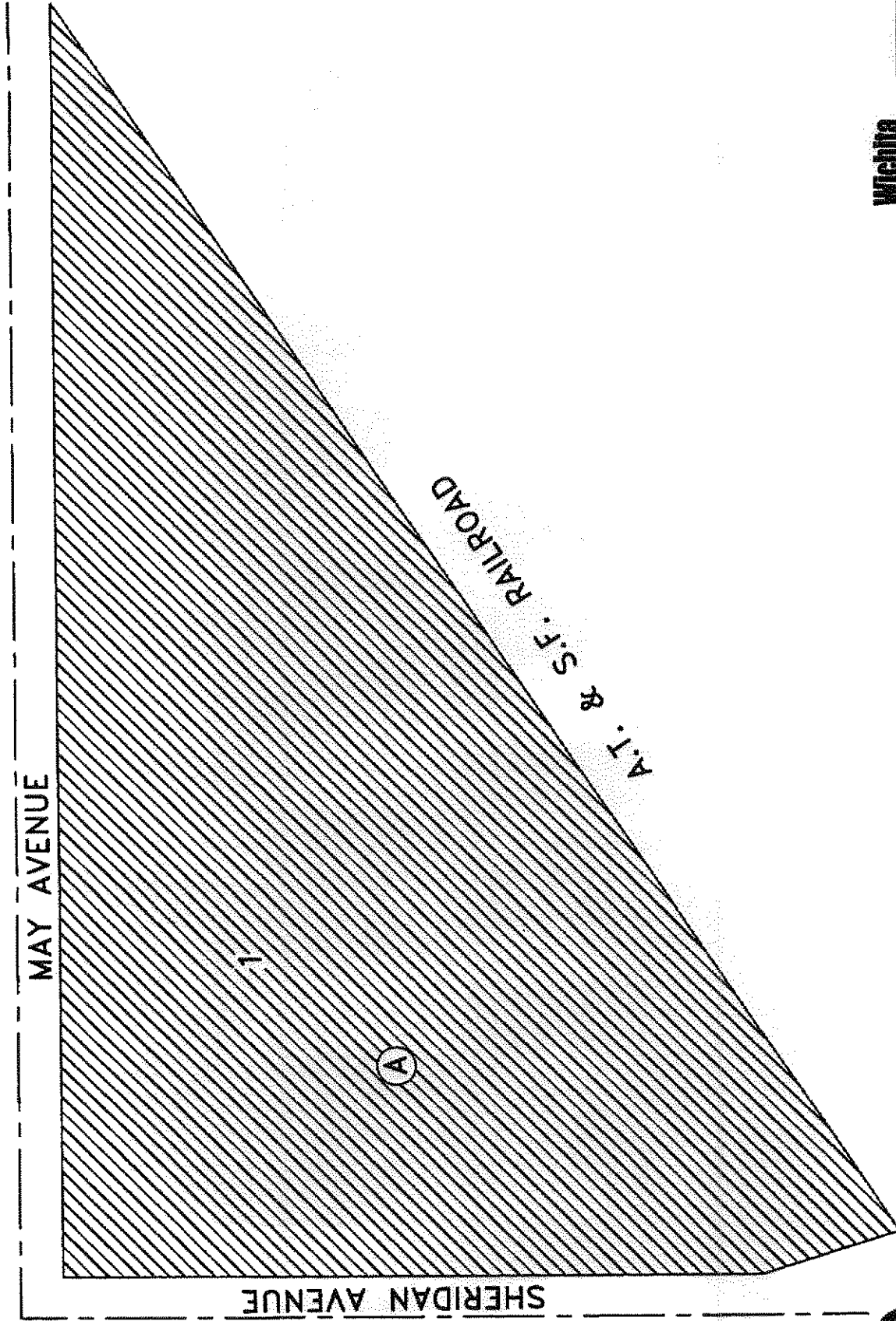
ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

# METAL-FAB ADDITION



PROPOSED IMPROVEMENT DISTRICT   
 (ACTUAL ALIGNMENT TO BE  
 DETERMINED BY DESIGN ENGINEER)

**City of Wichita  
City Council Meeting  
June 23, 2009**

**TO:** Mayor and City Council

**SUBJECT:** Program Management Services for Water Supply Projects - Supplemental Agreement

**INITIATED BY:** Water Utilities

**AGENDA:** Consent

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**Recommendation:** Approve Supplemental Agreement No. 4 with R.W. Beck, Inc. for Program Management Services for the Aquifer Storage and Recovery project.

**Background:** On October 3, 2000, the City Council approved and instructed Staff to begin implementation of the Concept Design Plan for the Integrated Local Water Supply Plan. The Integrated Local Water Supply Plan includes the use of a number of local water supply sources that will be used together to meet the City's water supply needs through the year 2050. On July 10, 2007, City Council authorized Phase II of the Aquifer Storage and Recovery (ASR) project.

An RFP for Program Management services was issued July 11, 2007, with two proposals received by Purchasing on August 8, 2007. The Staff Screening and Selection Committee met August 20, 2007, to hear presentations from R.W. Beck and CH2M-Hill. Based on the proposals and presentations, the SSSC voted unanimously to recommend the proposal from R.W. Beck. On December 20, 2007, the City Council approved a Contract with R.W. Beck for ASR Program Management services through 2008. On December 2, 2008, City Council approved Supplemental Agreement #3 with R.W. Beck to continue program management services for ASR Phase II.

**Analysis:** The Integrated Local Water Supply Plan includes a number of components, the most significant of which is the Equus Beds ASR. The project eventually will capture up to 100 million gallons-per-day (MGD) from the Little Arkansas River and recharge it into the Equus Beds Aquifer. Staff estimates that the dewatered component of the aquifer can hold up to 65 billion gallons, or about the same amount of water as is stored in Cheney Reservoir.

Phase II of the project will capture up to 30 MGD with a surface water intake and treat the water prior to transmitting the water into recharge wells. The treatment plant and intake will be constructed assuming that a total of 60 MGD of direct surface water will ultimately be captured and treated at these facilities, with up to 90 MGD possible by completion of the project.

Water Utilities does not have Staff resources to properly manage a project of this scope, which is estimated to cost over \$250 million. During the preliminary design of ASR Phase II facilities, Staff determined that additional services would be required of the program manager, to wit:

1. Technical advisory services (design review) associated with the ASR Phase II Design-Build Contract for the Surface Water Treatment Plant and Surface Water Intake project.
2. Pilot testing of the advance oxidation process proposed for treatment of atrazine in the surface water.

3. Peer review of the groundwater flow model used by the City for determining recharge credits available as a result of the City's ASR project operation.
4. Program management oversight of a bank storage diversion well investigation.

These services are essential to the successful completion and operation of the ASR Phase II project and/or future phases of the ASR water supply program.

**Financial Considerations:** The original Contract for Program Management Services was for an amount not to exceed \$1,406,303 through 2008. Supplemental Agreement No. 1 was for \$108,000 to provide aerial photography of the project area for use by project design engineers. Supplemental Agreement No. 2 was for \$481,590 to provide surveying for the project area. (Note: Supplemental Agreement No. 2 was about \$262,000 **less** than the amount quoted by the design firm.) Supplemental Agreement No. 3 was for continuation of Program Management Services through 2009 in the amount of \$2,964,561. Supplemental Agreement No. 4 is not to exceed \$110,000. Funding for this service is available in CIP W-549, Water Supply Projects.

**Goal Impact:** This project will ensure efficient infrastructure by providing reliable, compliant and secure utilities and will help assure that adequate water supplies are available for future customers.

**Legal Considerations:** The Law Department has approved the Supplemental Agreement as to form.

**Recommendations/Actions:** It is recommended that the City Council approve Supplemental Agreement No. 4 and authorize the necessary signatures.

**Attachments:** Supplemental Agreement No. 4 with R.W. Beck, Inc. for Program Management Services

April 22, 2009

Bill Morris  
Public Works Engineer  
7<sup>th</sup> Floor City Building  
455 N. Main  
Wichita, Kansas 67202

Re: Facade Improvement Program

Dear Bill:

Thank you very much for spending the time to inform me regarding the Facade Improvement Program. Attached please find the Facade Improvement Petition, which has been unanimously approved by the Homeowners Association. In addition, every owner has endorsed, and signed the attached Facade Improvement Petition.

We are requesting, unanimously, on behalf of the Homeowners Association and each and every owner at the Lofts at St. Francis, that the City approve the attached petition.

In addition, Chapter One (2) (5) gives the Association authority to levy special assessments by duly held meeting or by written approval by a majority of unit owners. We have accomplished both.

Chapter I and Declaration 13.1 pages 9 & 10 of the Lofts' By-laws and Declaration are attached.

Again, thank you for your assistance in this regard and please let me know if you need anything further.

Very truly yours,

  
David Bryan:mjb  
Enclosure

## FACADE IMPROVEMENT PETITION

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record Lofts at St Francis Homeowners Association, LLC a Kansas 501 (c3) non-profit company) as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Lot 14-16, 4th.Now St. Francis Ave. English's Addition, a subdivision in Wichita, Sedgwick County, KS.

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq. as amended, as follows:

- (a) That there be designed and reconstructed a facade that will enable historically or architecturally significant buildings to be preserved and eliminate exterior code deficiencies. That said improvements be constructed according to plans and specifications approved by the City of Wichita.
- (b) That the estimated and probable cost of the foregoing improvement being ONE HUNDRED , TWELVE THOUSAND, SIX HUNDRED, TWENTY DOLLARS AND 16/100 (\$112,620.16) including a 10% contingency, exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after June 1st, 2008.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the



property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a square foot basis:

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
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IMPROVEMENT DISTRICT

Lofts @ St Francis Homeowners Association, LLC

Lot 14-16, 4th.Now St. Francis Ave. English's Addition, a subdivision in Wichita, Sedgwick County, KS.

Keto Miller President

BY:

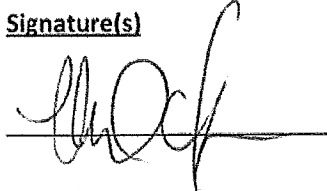
Dr. M. J. Bond of Dwyer

ITS:

Hampton Associates, LLC  
Hampton Associates, LLC

## The Lofts at St. Francis Façade Approval Petition

Owners of the Lofts at St. Francis condos (whose legal descriptions are listed below) hereby join in the petition for the façade improvement project as outlined in the Façade Improvement Petition that was approved by the Homeowners Association.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 100	The Lofts at St. Francis, LLC	 Member	11/20/08

**Legal Description:**

Unit 100, in The Lofts at St. Francis, a Condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 101	The Lofts at St. Francis, LLC	 Member	11/23/08
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**Legal Description:**

Unit 101, in The Lofts at St. Francis, a Condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 102	James & Sharon Jury		2/02/09
			2/02/09

**Legal Description:**

Unit 102, in The Lofts at St. Francis, a Condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 103	<del>Erik Breen</del> Dave Harris		3/15/2009
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**Legal Description:**

Unit 103, in The Lofts at St. Francis, a Condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 104	Keith Mullane		2/2/09



**Legal Description:**

Unit 104, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 105	James & Sharon Jury		2/2/09
			2/2/09

**Legal Description:**

Unit 105, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 200	Gary & Carolyn Salyer		2/2/09
			

**Legal Description:**

Unit 200, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 201	Jason Kravarik		2/2/09
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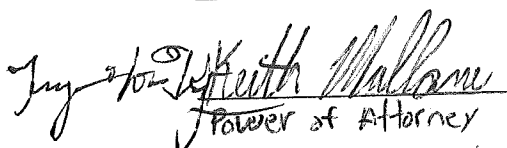

**Legal Description:**

Unit 201, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 202	John Gowring		4/11/09
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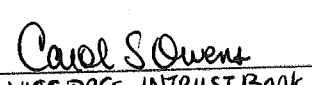
**Legal Description:**

Unit 202, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Condo #	Owner(s)	Signature(s)	Date
Unit 203	Tracy & Kari Toy	 Power of Attorney 	3/4/09 3/4/09

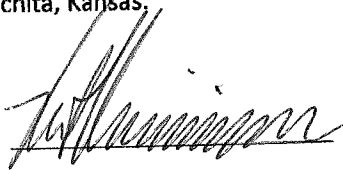

**Legal Description:**

Unit 203, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 300	Wichita OB-GYN ASSOCIATES, PA 401(C) PROFIT SHARING PLAN FBO <del>Duke Naiphon</del> <b>BYRON CLINE</b>	 VIEE PRES., INTRUST Bank, NA Trustee, Wichita OB-GYN Associates, PA Profit Sharing Plan	4/20/09
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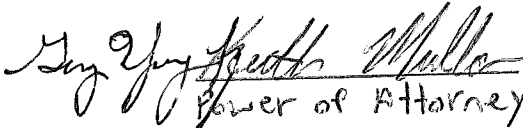
**Legal Description:**

Unit 300, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 301	Rick & Rebecca Kimminau	 	2/3/2009 2/3/2009
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**Legal Description:**

Unit 301, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 302	 Gary Young	 Power of Attorney	4/7/09
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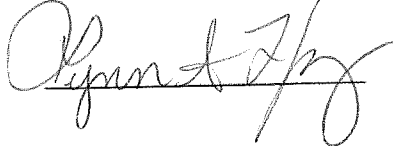
**Legal Description:**

Unit 302, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 303	Ryan Garlow Corrie Garlow	 	2/3/09 2/3/09
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**Legal Description:**

Unit 303, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 304	Lynn A. Trefz		02/02/2009

**Legal Description:**

Unit 304, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 305	Steve Barger <del>Kirk Short</del>		4/20/09
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**Legal Description:**

Unit 305, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 400	Steve Sartan <del>Dr. A. Pfeuffer</del>		2/2/09
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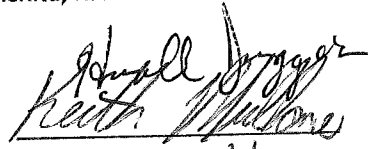
**Legal Description:**

Unit 400, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 401	Matt Moneymaker	 Power of Attorney	4/8/09
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**Legal Description:**

Unit 401, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 402	Harold & Kelly Jagger	 Power of Attorney	3/3/09
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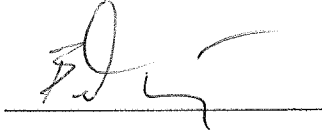

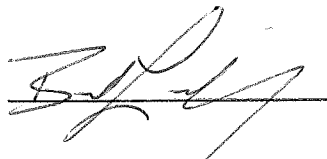

**Legal Description:**


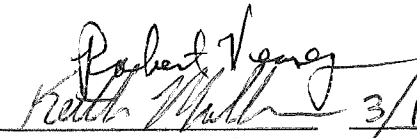
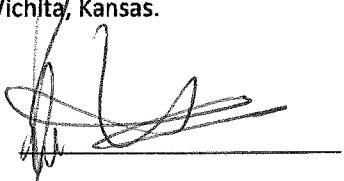
Unit 402, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 403	Jeff Riemann <del>Kirk Short</del>		4-7-09
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**Legal Description:**

Unit 403, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4<sup>th</sup>, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 404	Ryan Garlow Corrie Garlow	See Unit 303 also, Ryan Garlow Corrie Garlow	
Legal Description: Unit 404, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 <sup>th</sup> , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 405	Brad English		2-2-09
Legal Description: Unit 405, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 <sup>th</sup> , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 500	Jeremy Grey		4/14/09
Legal Description: Unit 500, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 <sup>th</sup> , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 501	Brad Ludwig		2/2/09
Legal Description: Unit 501, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 <sup>th</sup> , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 502	Adam Erickson	 Keith Mallow Power of Attorney	3/15/09
Legal Description: Unit 502, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 <sup>th</sup> , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 503	David Bryan MARTY BRIAN	 Marty Bryan	2/2/09
Legal Description: Unit 503, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 <sup>th</sup> , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 504	Robert Veazey	 Robert Veazey Power of Attorney	3/12/09
Legal Description: Unit 504, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 <sup>th</sup> , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 505	Ron Hale		2-2-09
Legal Description: Unit 505, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 <sup>th</sup> , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			

LIMITED POWER OF ATTORNEY  
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Tracy Toy, owner of record of Unit 203, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

ACKNOWLEDGEMENT

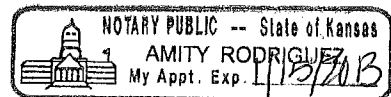
On this 25 day of February, 2009, before me a Notary Public in and for Kansas, came Tracy Toy who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.

My Commission Expires

1/15/2013

Amity Rodriguez  
NOTARY PUBLIC





LIMITED POWER OF ATTORNEY  
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Cyrena Young, owner of record of Unit 302, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

ACKNOWLEDGEMENT

On this 3<sup>rd</sup> day of April, 2009, before me a Notary Public in and for Cyrena Young, came KDC K0197350 who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.

Cindy Patton-Smith  
NOTARY PUBLIC

My Commission Expires

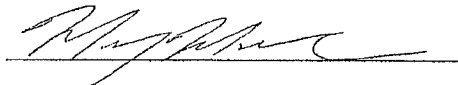
4-20-10



LIMITED POWER OF ATTORNEY  
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Matthew J. Moneymaker, owner of record of Unit #401, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

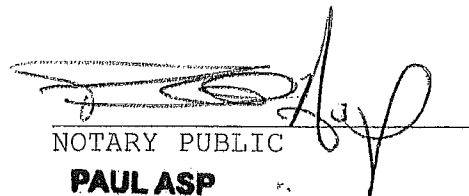
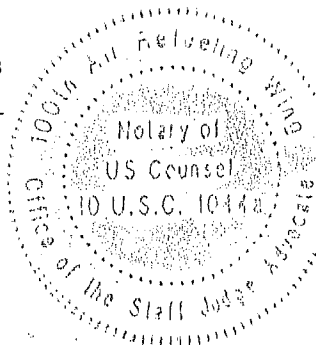


**ACKNOWLEDGEMENT**

On this 08 day of April, 2009, before me a Notary Public in and for \_\_\_\_\_, came Matthew J. Moneymaker who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.

My Commission Expires  
10 June 2012

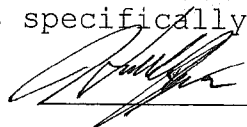


NOTARY PUBLIC  
**PAUL ASP**  
Paralegal  
Notary by Federal Statute  
10 U.S.C. 1044a

LIMITED POWER OF ATTORNEY  
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Harold N. Jagger II, owner of record of Unit 402, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.



**ACKNOWLEDGEMENT**

On this 24<sup>th</sup> day of February, 2009, before me a Notary Public in and for CALIFORNIA, came HAROLD N. JAGGER II who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.

  
NOTARY PUBLIC

My Commission Expires

Oct 5, 2011



LIMITED POWER OF ATTORNEY  
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Robert C. Erickson, owner of record of Unit 502, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

ACKNOWLEDGEMENT

On this 3 day of February, 2009, before me a Notary Public in and for Laura Russell, came Robert C. Erickson who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.



Laura Russell  
NOTARY PUBLIC

My Commission Expires  
2/2/2010

## DURABLE POWER OF ATTORNEY

KNOWN BY ALL MEN BY THESE PRESENTS, that on this 31<sup>st</sup> day of May, 2008. I, Adam Erickson, single ("Principal"), do hereby constitute and appoint Robert Erickson, whose Mailing Address is: 1721 N. Callahan Wichita KS 67212, my true and lawful attorney-in-fact for me for the purposes set forth in this instrument with respect to the following real estate located at 201 S. St. Francis (Street Address) Wichita KS 67202 (hereinafter referred to as the Subject Property):

1. **Powers granted my attorney-in-fact.** I hereby give, grant and bestow upon my attorney-in-fact the following powers:
  - (a) to sell, transfer and convey the homestead and any other real property; to make, execute, acknowledge, endorse and deliver for me all contracts, extensions, closing statements, assignments, escrow agreements, affidavits, deeds and all other documents and instruments of whatever kind necessary to consummate the sale of the Subject Property upon whatever terms my attorney shall deem acceptable; to transfer and convey to any Grantee whomsoever for such sum and on such terms and with such agreements as to him or her shall seem proper; deliver good and sufficient conveyances for the same upon any such consideration and with any such clauses, covenants and agreements to be therein contained as my attorney-in-fact shall think fit and convenient;
  - (b) to purchase, acquire, manage, and control all of my interest in and to the Subject Property; to demise or lease Subject Property to such person or persons

and for such rent as he may see fit; to make, execute and acknowledge all documents necessary to purchase, acquire, lease or manage Subject Property;

- (c) to borrow money on my behalf from any individual or institution; to make, execute, deliver and acknowledge any mortgages, deeds of trust, promissory notes, construction loan agreements, interim financing agreements, long-term financing agreements, or any other forms of encumbrances thereon as my attorney-in-fact shall deem necessary;

- (d) to recover, collect and receive all sums of money which shall become due and owing to me in my name by means of any sale, conveyance or lease and to take all lawful ways and means for the recovery thereof, to execute and deliver sufficient acquittances, releases and discharges therefor as well as of any lien or liens securing any obligation arising in connection therewith;
  - (e) to act under changed conditions, the exact nature of which cannot now be foreseen, it being intended to vest in my said attorney, and I do hereby vest in my said attorney, full power to control and manage Subject Property, giving and granting to my attorney-in-fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in connection with the Subject Property.
- 2. **Enumeration of Powers is Not a Limitation of Powers.** The foregoing enumeration of powers shall not be held to limit or restrict in any manner the powers of my attorney-in-fact to deal in any manner with respect to Subject Property.
  - 3. **Ratification of Attorney's Acts.** I hereby ratify and confirm all that my attorney-in-fact may or shall lawfully do or cause to be done by virtue of the powers herein granted my attorney-in-fact.
  - 4. **Hold Harmless for Reliance upon this Document.** I covenant and agree to hold harmless any person who may act in reliance upon the authority granted herein to my attorney-in-fact.
  - 5. **Recording of Power Attorney.** This Durable Power of Attorney may be recorded in the office of the Register of Deeds of the county in which the Subject Property is located.
  - 6. **Revocation.** This Power of Attorney shall remain in full force and effect unless, and until, I record a revocation of this Power of Attorney in the office of the Register of Deeds of the county in which the Subject Property is located.
  - 7. **Joint Consent.** We hereby give our joint consent to the sale, transfer, mortgage or other alienation of the above subject property, and our appointed attorney in fact may so alienate our interests, and we agree that in said agent doing so, the consent of such attorney in fact constitutes our consent as principals to such alienation, as applicable or required by Article 15, Section 9 of the Kansas Constitution. **This Power of Attorney has been executed by both the husband and wife when that relationship exists.**

THIS IS A DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT SHALL NOT TERMINATE IF I BECOME DISABLED OR IN THE EVENT OF LATER UNCERTAINTY AS TO WHETHER I AM DEAD OR ALIVE.

For the purpose of this document, wherever the singular is used, the plural is implied and understood.

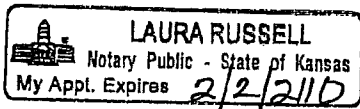
*[Signature]*  
*[Signature]*

STATE OF                                }  
  } ss.  
COUNTY OF                            }

This instrument was acknowledged before me on May 31, 2008 by  
Adam Erickson and  
Robert Erickson

*Laura Russell*  
- Notary Public

My Appointment Expires:





LIMITED POWER OF ATTORNEY  
(K.S.A. 58-601 - 58-603)

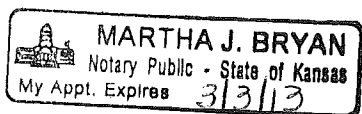
KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Robert M. Veazey, owner of record of Unit 504, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

**ACKNOWLEDGEMENT**

On this 24th day of February, 2009, before me a Notary Public in and for Kansas, came Robert M. Veazey who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.



Martha J. Bryan  
NOTARY PUBLIC

My Commission Expires  
3/3/13

## CHAPTER I -- ASSESSMENTS

### 1. Purpose of Assessments:

Assessments shall be used for the management, operation, cleaning, repair, maintenance, care, improvement, and alteration of the Common Elements and services related to the use and enjoyment of the Common Elements.

### 2. Determination of Assessments:

The Board shall have the power and authority to determine the amount of the general and special assessments. If the monthly assessments for any year will be more than 120% of the previous year's monthly assessment, the additional assessment must be approved at a duly held meeting or by written approval by a majority of the unit owners.

### 3. Allocation:

Assessments shall be allocated against each Owner and Unit according to the percentage interest of such Owner and Unit in the Common Elements

### 4. Payment of Assessments:

It is the responsibility of each Owner of a Unit to pay monthly and/or special assessments for the Unit's share of the Association's expenses and reserve allocation. Monthly assessments (i.e. homeowner monthly fees, water/sewer and/or special assessments) shall be due in advance on or before the first day of the month. Payment is to be forwarded to the Management Company. An owner shall be deemed to be in good standing and entitled to vote at any annual meeting or at a special meeting of the owners, within the meaning of the By-Laws, if and only if he shall have fully paid all assessments made or levied against him and the unit owned by him.

### 5. Special Assessments:

In addition to monthly assessments, the Association may levy Special Assessments as explained in the Declaration.

### 6. Delinquency:

Assessments will be past due and subject to a late charge if not paid in full by the end of each month. The assessment will remain past due until paid in full, together with all costs, penalties, and interest. Assessments shall be subject to a 10% penalty if unpaid by the end of the month in which they are due.

### 7. Fines:

The Board shall have the power to levy reasonable fines against any Owner who has breached or continues to breach any of the provisions of the Declaration or By-laws of the Association.

9. No Exemption:

No Owner may exempt himself from liability for his assessments by waiving use of the Common Elements or abandoning his Unit.

10. Lien for Assessments:

The Association may file a lien on a Unit for unpaid assessments. The lien will be recorded in the office of the Sedgwick County Register of Deeds. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association

11. Ad Valorem Taxes and Utilities:

Each Owner shall be responsible for paying county property taxes or other assessments against the Owner's Unit. Each Owner shall also be responsible for paying all utilities delivered to the Owner's Unit.

12. Penalty Procedures:

If an Association rule or regulation is broken, the following penalty procedure shall be followed:

- a. Letter from Management is sent to Homeowner describing the violation, giving Homeowner a stated number of days to correct the violation.
- b. If same violation occurs, the Association will take necessary action to remedy the violation and the Homeowner will be assessed the cost, if any, to remedy the violation.
- c. The third and subsequent violations will result in a \$50 penalty to be assessed per occurrence, as well as assessing the Homeowner the cost, if any, to remedy the violation.

the foregoing will be deemed to have been given on the date that it is mailed or hand-delivered.

**11.4 Bylaws.** The Association shall be governed by the Bylaws attached hereto as Exhibit G as such Bylaws may be amended from time to time.

**12. Duties of the Association.** The Association shall be responsible for the exclusive management, control, maintenance, repair and replacement of the Common Areas, and pursuant to the easements created under Article 3.1(b), provided, however, that each Owner shall be responsible for keeping the Limited Common Areas designated for use in connection with such Owner's apartment in good, clean, sanitary, and attractive condition. The Association shall be responsible for the maintenance and repair of exterior surfaces of the Building and the Garages, including, without limitation, the maintenance and repair of roofs, exterior windows, and doors ("Exterior Surfaces"), as well as the maintenance and repair of all Common Areas, all to the extent and at such times as deemed necessary by the Board. The Association shall not be responsible for maintenance or repair of door opening mechanisms in the Garages, including tracks, rollers, motors, remote controls, or any other component thereof. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be a part of the Association assessment. The Association shall have a reasonable right of entry to any apartment, Limited Common Area, Common Area or Garage for the purpose of discharging the duties imposed on it herein. The Association may, at the discretion of the Board, enter into contracts for the professional management of the Property.

**13. Assessments.**

**13.1 Assessments.** The assessments levied by the Association shall be used to discharge the duties imposed on the Association hereunder and for other purposes as authorized herein. Proper uses of the assessments levied by the Association may include, but are not limited to, the expenditure of funds for taxes, fees, expenses, charges, levies, premiums, expenditures and other costs ("Common Expenses") of the Association for:

- a) Repairing, replacing, and maintaining the Common Areas;
- b) Installing, maintaining, and repairing utilities upon, across, over and under any part of the Property;
- c) Furnishing garbage and trash pick up and water and sewer services (if not separately metered);



**13.5 Special Assessments.** In addition to the annual assessments authorized above, the Board may upon thirty (30) days advance written notice to the Owners at any time determine, levy, and assess in any assessment year, at the Board's option, either with or without a vote of the members of the Association, a special assessment applicable to that particular assessment year and for any such longer period as the Board may determine, for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of any portion of the Property.

**13.6 Due Dates for Assessment Payments.** Unless otherwise determined by the Board, the annual assessments, and any special assessments which are to be paid in monthly installments, shall be paid monthly in advance and shall be due and payable to the Association without notice on the first day of each month. If any such monthly installment is not paid within ten (10) days after it is due, then the Board may assess a "late charge" thereon in amounts to be determined by the Board from time-to-time.

**13.7 New Owner Assessment.** Each time an apartment is resold, the new owner thereof shall pay, in addition to the other assessments described herein, a one time "new owner assessment" equal to twice the amount of the monthly assessment then being charged upon the apartment acquired by the new owner, after which the new owner will pay the same monthly assessment as then being charged against that apartment. The "new owner assessment" will not apply to the initial sale of an apartment from the Developer.

**13.8 Lien for Assessments.** All sums assessed by the Association to any apartment but unpaid shall constitute a lien on such apartment prior to all other liens except only (i) tax liens on the apartment in favor of any governmental unit or special district, and (ii) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the Board in a like manner as a mortgage of real property provided that any such foreclosure case is commenced within three years after the date the notice of such assessment or lien is recorded. During any such foreclosure the apartment Owner shall be required to pay a reasonable amount for assessments for the apartment, if so provided in the Bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Board shall have power to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

Where the mortgagee of a first mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the

**City of Wichita**  
**City Council Meeting**  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** Contract proposal for closed captioning of City Council telecasts on City7

**INITIATED BY:** City Manager's Office

**AGENDA:** Consent

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**Recommendation:** Approve the contract

**Background:** Closed captioning of City Council meeting telecasts has been studied and discussed for the past several years. The use of closed captioning for televised meetings of the Wichita City Council was a recommendation of the Wichita/Sedgwick County Access Advisory Board which oversaw the implementation of the City's compliance with the Americans with Disabilities Act. Closed captioning of City Council meetings will allow greater citizen participation in local government and is consistent with the City Council's emphasis on transparency and citizen engagement. A Request For Proposal (RFP) committee representing the City Manager's Office, Purchasing, Law and other departments oversaw the issuance of an RFP. After reviewing more than a dozen responses, three finalists were selected and interviewed. All finalists met a defined criterion for accuracy, reliability and compatibility with current City7 telecast operations. The RFP committee chose the contract proposal of Caption Colorado as the most cost efficient and recommends its approval by the City Council. The Caption Colorado quote was approximately 10 percent lower than the next qualified vendor.

**Analysis:** Approval of the contract will allow for closed captioning of City Council meetings as soon as the necessary equipment is installed.

**Financial Considerations:** The contract provides an hourly payment of \$90. Total annual estimated cost of \$9,720 is based on a projection of 108 hours (three hours a week for three weeks each month) Actual cost may vary depending on the length of weekly City Council meetings. Startup costs include purchase of an encoder, estimated at \$995. Ongoing costs include the provision of two phone lines at annual charge of \$228. The operational costs will be funded from the City7 Broadcasting budget.

**Goal Impact:** Adoption of the policy will contribute to the Internal Perspectives services goal relating to overall management, function and policy direction of the City of Wichita.

**Legal Considerations:** Law has reviewed and approved the contract as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the issuance of a contract with Caption Colorado and authorize the expenditure from the City7 Broadcasting budget.

**Attachments:** Contract.

SUPPLEMENTAL AGREEMENT NO. 4

TO THE

AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

BETWEEN

THE CITY OF WICHITA, KANSAS HEREINAFTER CALLED "CITY"

AND

R. W. BECK, INC. HEREINAFTER CALLED "CONSULTANT"

FOR

PROGRAM MANAGEMENT SERVICES ASSOCIATED WITH INTEGRATED LOCAL  
WATER SUPPLY PLAN IMPLEMENTATION

**WITNESSETH:**

WHEREAS, there now exists an Agreement between the two parties covering program management services to be provided by the CONSULTANT in conjunction with the implementation of the Integrated Local Water Supply Plan.

WHEREAS, Paragraph IV.D. of the above referenced Agreement provides that additional services not covered by the original scope of the agreement and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the CONSULTANT provide additional services required for the implementation of the ASR PHASE II PROGRAM, a component of the ILWS Plan, and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

**A. PROJECT DESCRIPTION**

CONSULTANT shall perform the following additional services:

1. Technical Advisory Services associated with the ASR Phase II Design/Build (D/B) of the Surface Water Treatment Plant (SWTP) and River Intake Project.
2. CONSULTANT shall perform Pilot Testing of the Advanced Oxidation Products (AOP) Process.
3. CONSULTANT shall provide Peer Review of the Groundwater Flow Model used by the CITY for Recharge Credit Accounting purposes and provided to the Kansas Division of Water Resources (DWR).



4. CONSULTANT shall provide Program Management Oversight of the Diversion Well Investigation that is being conducted to better define future phases of the ASR Program.

**A.1. Technical Advisory Services**

The scope of services for the Technical Advisory Services associated with the ASR Phase II D/B of the SWTP and River Intake Project are described in Exhibit A. It is anticipated that these services will be sub-contracted to CDM. The estimated budget for these services is summarized in Exhibit A and shall not exceed \$100,000.

**A.2. Pilot Testing of the AOP Process**

The scope of services for the Pilot Testing of the AOP Process is described in Exhibit B. It is anticipated that these services will be sub-contracted to CDM. The estimated budget for these services is summarized in Exhibit C. Program Management Oversight shall include, consultant procurement activities, management of sub-consultant's contract, site visits, document reviews, workshops and meetings. The estimated budget for Program Management services, during 2009, associated with the AOP Pilot Testing is \$15,000. The total estimated budget for Pilot Testing of the AOP Process shall not exceed \$340,000.

**A.3. Peer Review of the Groundwater Flow Model**

The scope and estimated costs for the Groundwater Flow Model Peer review, during 2009, are as follows:

1. Peer Review Kickoff Meeting and Workshop	\$ 7,500
2. Peer Review of Groundwater Model	\$ 65,000
3. Findings Workshop	\$ 7,500
4. Peer Review Findings Report	\$ 20,000
5. Program Management Oversight	\$ 10,000

The total estimated budget for Peer Review of the Groundwater Flow Model shall not exceed \$110,000.

**A.4. Diversion Well Investigation**

The scope of services for Program Management Oversight of the Diversion Well Investigation includes; procurement activities, management of the selected consultant, site visits, document reviews, workshops/meetings, coordination with land owners for access, coordination with regulatory agencies, and permitting. The estimated budget for Program Management services associated with the Diversion Well Investigation, during 2009, shall not exceed \$20,000.

The estimated budget for Supplemental Agreement No. 4 shall not exceed \$570,000 and is summarized as follows:

Tasks	Estimated Budget
A.1. Technical Advisory Services	\$100,000
A.2. Pilot Testing of the AOP Process	\$340,000
A.3. Groundwater Flow Model Peer Review	\$110,000
A.4. Diversion Well Investigation	\$20,000
<b>Total</b>	<b>\$570,000</b>

**B. PAYMENT PROVISIONS**

Payment to the CONSULTANT for the performance of the services described by this Supplemental Agreement shall be in accordance with Paragraph IV of the original Agreement, and shall not exceed the amount designated in this Supplemental Agreement.

**C. PROJECT SCHEDULE**

The project schedule shall include no additional time to Supplemental Agreement No. 3.

**D. PROVISIONS OF THE ORIGINAL AGREEMENT**

The parties hereunto mutually agree that all provisions and requirements of the existing Agreement, not specifically modified by this Supplemental Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the CITY and the DESIGNER have executed this Supplemental Agreement No. 4 as of this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2009.

CITY OF WICHITA

By: \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

By: \_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Gary Rebenstorf, Director of Law

R. W. BECK, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**TO AGREEMENT BETWEEN**  
**CONSULTANT AND SUBCONSULTANT**  
**Technical Advisory Services**

This is an exhibit attached to and made a part of the Agreement dated \_\_\_\_\_, 2009, between R.W. Beck (CONSULTANT) and Camp Dresser & McKee Inc. (SUBCONSULTANT) for professional services. CONSULTANT holds a prime agreement with the City of Wichita, Kansas (CITY). Under its prime agreement with the CITY, CONSULTANT is providing TECHNICAL ADVISORY SERVICES related to the final design of the ASR Phase II Surface Water Treatment Plant (SWTP) & River Intake (PROJECT) associated with CONSULTANT's Program Management Services for the Integrated Local Water Supply Plan Implementation - ASR Phase II Program.

CITY has awarded final design and construction of the PROJECT to ABC Partners. CONSULTANT intends to request TECHNICAL ADVISORY SERVICES from SUBCONSULTANT as CONSULTANT's need arises.

**1.0 SUBCONSULTANT SERVICES**

CONSULTANT will request services, hereinafter referenced as a Work Request, of SUBCONSULTANT on a case-by-case basis as CONSULTANT's need for TECHNICAL ADVISORY SERVICES arises. Each Work Request request will be made in writing, via email, or documented phone call.

SUBCONSULTANT will review each Work Request upon receipt and respond in writing or via email to notify CONSULTANT that the Work Request is accepted or that SUBCONSULTANT wishes to negotiate the terms of the Work Request.

SUBCONSULTANT shall commence work on a given Work Request only upon mutual agreement between SUBCONSULTANT and CONSULTANT.

**2.0 TIME PERIOD FOR PERFORMANCE**

The time period for the performance of SUBCONSULTANT's Services are as follows:

Contract Completion: December 31, 2009

**3.0 METHOD OF PAYMENT**

The method of payment for Services rendered by SUBCONSULTANT shall be as set forth below:

CONSULTANT agrees to pay SUBCONSULTANT as follows:

For work done by the SUBCONSULTANT at the hourly billing rate for the category of the individual performing the work, for all time directly chargeable to the project plus actual out-of-pocket expense cost. The SUBCONSULTANT's schedule of Hourly Billing Rates is attached as Exhibit D.

Actual out-of-pocket expense costs are all costs other than SUBCONSULTANT's labor costs that are incurred during the progress of the work. The actual out-of-pocket expense costs include: air fare, automobile rental if required, mileage charges, parking, tolls, taxi, meals, lodging, telephone, printing and reproduction costs, and

other miscellaneous costs incurred specifically for this project.

The total cost of all TECHNICAL ADVISORY SERVICES shall not exceed \$100,000.00.

Unless this contract is otherwise amended, SUBCONSULTANT'S services shall terminate upon completion of all mutually agreed upon Work Requests, upon the contract completion date, or upon reaching the not-to-exceed limit.

**EXHIBIT B**  
**TO AGREEMENT BETWEEN**  
**CONSULTANT AND SUBCONSULTANT**  
**Field Verification of the Advanced Oxidation Products Process for Atrazine Destruction and 4-Log Virus Inactivation**

This is an exhibit attached to and made a part of the Agreement dated \_\_\_\_\_, 2009, between R.W. Beck (CONSULTANT) and Camp Dresser & McKee Inc. (SUBCONSULTANT) for professional services. CONSULTANT holds a prime agreement with the City of Wichita, Kansas (CITY).

**1.0 SUBCONSULTANT'S SERVICES**

The purpose of these services are to:

- Field-confirm at the pilot –scale level the ability of the proprietary HiPOx™ advanced oxidation products (AOP) System using ozone and hydrogen peroxide to reduce atrazine concentrations to below the 3 microgram per liter (ug/L) Primary Drinking Water Standard (PDWS) without exceeding 10 ug/L PDWS for bromate.
- Field-confirm at the pilot –scale level the intended use of the AOP process to provide the required 4-log virus inactivation as a “technology-based” methodology as opposed to a “disinfectant residual – contact time product (Ct)” methodology.

The Scope of Work to be provided by SUBCONSULTANT includes the following additional BASIC SERVICES relating to the project consulting activities:

- Task 1 – Project Kickoff Meeting and Workshop
- Task 2 – Ultrafiltration (UF)/Advanced Oxidation Products (AOP) Pilot Equipment Pilot Plants and Ancillary Equipment
- Task 3 – UF/AOP Pilot Plant Testing Protocol
- Task 4 – UF/AOP Pilot Plant Testing
- Task 5 – UF/AOP Pilot Study Technical Memorandum
- Task 6 – Special Studies (IF REQUIRED)

The specific anticipated products of the scope of work to be delivered to the CITY include the following:

- Task 1 - Workshop Agenda, Preliminary Technical Information Package, and Draft / Final Meeting Minutes
- Task 2 – Pilot Plant Process Flow Diagram, Draft / Final Ancillary Materials and Equipment List, Draft / Final Materials and Equipment Workshop Minutes, and Pilot Plant Rental Agreements

- Task 3- Draft / Final Pilot Plant Protocol and Draft / Final Pilot Testing Coordination Workshop Minutes
- Task 4 – Monthly Summary of Testing Data
- Task 5 - Draft / Final Pilot Study Technical Memorandums and Draft / Final Workshop Minutes
- Task 6 – Draft / Final Special Testing Protocols, Special Testing Agreements and Draft / Final Workshop Minutes (IF REQUIRED)

The work to be performed is described in detail as a series of tasks presented in the following sections of this exhibit.

**Task 1 – Project Kickoff Meeting and Workshop**

SUBCONSULTANT will prepare for and participate in a one-day project kickoff meeting and technical workshop with CITY to discuss project goals and objectives, management issues, lines of communication, project deliverables, and schedule. In addition, regulatory constraints and CITY-supplied services will be clearly identified and thoroughly discussed to facilitate pilot testing planning and execution. The technical workshop will be focused on the pilot plant testing program including discussions relating to applicable treatment goals and operational issues, pilot plant source water and location issues, site security, necessary support services, pilot plant procurement, pilot plant monitoring, water quality sampling and analytical services, permitting, and coordination with applicable regulatory agencies. A particular focus will be placed upon the desired operational protocol and raw water quality spiking. Prior to the meeting SUBCONSULTANT will prepare and distribute a Workshop Agenda and Preliminary Technical Information Package relating to the pilot plant testing. SUBCONSULTANT will visit the assumed pilot plant test site to confirm site conditions and prepare hand-sketches of the proposed pilot plant layout. Subsequent to the meeting, SUBCONSULTANT will produce Draft Workshop Minutes for CITY review. SUBCONSULTANT will receive comments, edit the Workshop Minutes appropriately, and submit the Final Workshop Minutes to the participating CITY staff.

**Task 2 – Ultrafiltration (UF) /Advanced Oxidation Products (AOP) Pilot Equipment Pilot Plants and Ancillary Equipment**

SUBCONSULTANT will coordinate the procurement, mobilization, set-up, calibration, and demobilization of the required pilot plant components as described herein.

**Task 2.1 –UF / AOP Pilot Plant and Ancillary Equipment Identification and Sizing**

The major unit processes to be utilized in the pilot plant testing have been preliminarily identified and sized. The UF pilot plant will be a unit supplied by GE/Zenon. The AOP pilot plant will be a field unit using the HiPOx™ process as supplied by Applied Process Technology, Inc. (APT). SUBCONSULTANT will utilize vendor-specific data to design all ancillary equipment required to operate these pilot units including raw water supply, chemical feed, and residuals handling. SUBCONSULTANT will prepare and submit to the CITY a process flow diagram (PFD) that provides all necessary information (flow, pressure, line size and materials, interstage pumping, break tanks, etc.) to perform equipment ordering and field work for pilot plant set-up. SUBCONSULTANT will specifically detail the necessary chemicals, solution make-up, storage, and feed methods for the chemicals used to spike the raw water (atrazine, bromide, alkalinity, and MS2 coliphage). Note that raw water alkalinity will not be field-adjusted.

It has been agreed by the CITY that the UF membrane process has been proven to meet the requirements of the Project. The primary purpose of the UF process will be to merely supply membrane filtered water for the AOP process.

#### **Task 2.2 – Develop Ancillary Materials and Equipment List**

SUBCONSULTANT will develop and submit a Draft Ancillary Materials and Equipment List that will identify ancillary equipment and materials needed to complete the testing established in Tasks 1 and 2. Ancillary equipment and materials not provided by the membrane manufacturer such as temporary pumping, break tanks and mixers, piping, and temporary power supply will be identified in Task 2.1 and an estimated cost assigned to this equipment in this task.

#### **Task 2.3 – Ancillary Materials and Equipment Workshop**

SUBCONSULTANT will prepare for and participate in a half-day workshop with CITY staff to evaluate and establish a preliminary list of ancillary equipment and materials items based upon the Draft Equipment and Materials List. CITY will be responsible for procurement and installation of ancillary equipment and materials required for SUBCONSULTANT to complete the work defined in this Agreement. SUBCONSULTANT will prepare and submit Draft Workshop Minutes, receive comments from the CITY, and revise and submit a Final Equipment and Materials List.

#### **Task 2.4 – Negotiate Rental Agreements**

SUBCONSULTANT will provide services related to the preparation of appropriate Pilot Plant Rental Agreements and will assist the CITY in its negotiations with the selected manufacturers for procurement of the necessary pilot plant equipment by the CITY. SUBCONSULTANT will coordinate equipment layout and assist the CITY with coordinating pilot equipment delivery schedules.

#### **Task 2.5 – Pilot Plant Setup Assistance**

SUBCONSULTANT will provide services related to the site preparation, delivery, inspection, and initial setup of the UF/AOP pilot plants. SUBCONSULTANT will coordinate with the CITY on site-specific coordination issues including electrical power supply. SUBCONSULTANT will coordinate the delivery of the UF/AOP pilot plants to the pilot testing site and provide the following services:

- Inspect the delivered pilot plants for damage and completeness of shipment. SUBCONSULTANT will coordinate with the pilot plant suppliers to identify any needed repairs that should be made by said suppliers.
- ~~Observe, advise, and direct CITY installation of pilot equipment and ancillary equipment and materials.~~ [Removed]
- Perform initial setup of the pilot plants with manufacturer's staff including loading membrane modules and calibrating chemical systems. Utility connections shall be performed by CITY.
- Perform, with manufacturer's staff assistance, initial checkout of pilot plants to determine proper performance of all specified components.

Pilot plant demobilization and preparation of rented equipment for shipping shall be the responsibility of the CITY.

#### **Task 3 –UF/AOP Pilot Plant Testing Protocol and Workshop**

SUBCONSULTANT will provide the following services related to producing a Pilot Plant Testing Protocol and participating in a Workshop to discuss said protocol.

##### **Task 3.1 – Pilot Plant Testing Protocol**

SUBCONSULTANT will prepare and submit a Draft Pilot Plant Testing Protocol to CITY and the State of Kansas Department of Health and Environment (KDHE) for review and comments. The protocol will address the items as included in the Proposed Table of Contents attached to this document as Attachment 1. Comments from the KDHE and CITY from the Protocol Workshop specified in Task 3.2 will be reviewed and incorporated as appropriate into the Final Pilot Plant



Testing Protocol. Following the Protocol Workshop specified in Task 3.2, SUBCONSULTANT will revise and submit the Final Pilot Plant Testing Protocol to the CITY.

#### **Task 3.2 – Protocol Workshop**

A half-day Protocol Workshop will be held with CITY and KDHE personnel to review the Draft Pilot Plant Testing Protocol and address specific operations issues. A specific goal of this Protocol Workshop would be the establishment of treatment goals, pilot-study objectives, sampling requirements, and water quality analyses. Final equipment setup, testing, equipment, and analytical needs will also be identified and responsibilities determined in this Protocol Workshop. Comments from the KDHE and CITY will be reviewed and incorporated as appropriate into the Final Pilot Plant Testing Protocol. SUBCONSULTANT will edit the draft protocol as necessary and submit the final protocol to the CITY. SUBCONSULTANT will produce and submit a Draft Protocol Workshop Minutes to the CITY, receive comments from the CITY, and produce and submit the Final Protocol Workshop Minutes.

#### **Task 4 – UF/AOP Pilot Plant Testing**

SUBCONSULTANT will provide services related to the performance of the pilot plant tests identified in Task 3 for up to 30 days of on-site operation provided by SUBCONSULTANT as river conditions allow. The pilot testing duration will begin in the Spring of 2009 and conclude prior to Fall 2009. It is important that pilot tests represent real-world conditions to the greatest extent possible; therefore, testing will mimic the anticipated future operation of the ASR system with periodic shutdowns corresponding to periods of low river flow to the extent possible. However, because the frequency, duration, and turbidity levels of above base-flow events in the Little Arkansas River are somewhat unpredictable, in the event that the river discharge remains insufficient to operate the pilot equipment, it may be necessary for the CITY to acquire a term permit from the Division of Water Resources (DWR) for the relatively small volume of water required to run the pilot equipment at times when the river is below base-flow or to collect and store water during qualifying river events for later testing. Another critical component of the testing will be spiking of the raw water to match, as closely as possible, the Design Raw Water Quality as provided in the ASR Phase 2 Surface Water Treatment Plant (ASR Phase 2 SWTP) Preliminary Design Report. The duration of the testing at the maximum concentrations will be field determined and intended, as weather conditions allow, to be sufficiently long to meet expected actual conditions experienced by a full-scale ASR Phase 2 SWTP.

SUBCONSULTANT will coordinate with the pilot plant manufacturers to establish procedures for short-term shutdown procedures.

It is intended that the pilot plant equipment will be wet-tested using water available in the Little Arkansas River. The first rain event will be used to further refine chemical feeds under changing river flow and quality conditions. The remainder of this event and probably the second rain event will be used to assess operational criteria at design raw water quality. Remaining rain events will be used for process optimization. If naturally occurring events do not provide sufficient river flow during these testing periods, temporary pumping and water quality spiking will be required. Since this condition, and the labor required to accommodate this condition, is unknown at this time the costs, including labor, required to spike raw water during non-qualifying river events are not included in this Agreement. SUBCONSULTANT will provide personnel to conduct all tests and supervise CITY personnel that may assist during the pilot testing. SUBCONSULTANT will provide a Monthly Status Report to CITY that summarizes all pilot plant operations and obtained data.

#### **Task 5 –UF / AOP Pilot Study Report**

SUBCONSULTANT will prepare an analysis of the pilot testing data, interpretation of results, and preparation of a Draft Pilot Study Report. The Draft Pilot Study Report will be submitted to the CITY for review and comment in a half-day Workshop setting. Concurrently, the draft report will be submitted to KDHE for review and approval. Another half-day workshop will be conducted with the

KDHE to present and review the findings of the study. Comments from KDHE and the CITY will be reviewed and incorporated as appropriate into the Final Pilot Study Report and submitted to the CITY.

The information included in the report will include testing procedures, tabulated data, test results, and conclusions. The selected Design-Builder for the ASR Phase 2 Surface Water Treatment Plant shall be responsible for interpretation of the results as they pertain to full-scale design.

#### **Special Studies (If Required)**

The Scope of Work to be provided by SUBCONSULTANT includes the following additional SPECIAL STUDIES relating to the project consulting activities:

##### **Task 6 – Special Studies**

As required by KDHE and upon written authorization from the CITY, SUBCONSULTANT will provide services for coordination, negotiation, preparation of Draft and Final Special Testing protocols, preparation of Draft and Final Special Testing Agreements, conducting Workshops, and preparing Draft and Final Workshop Minutes for any required Special Testing. At the time of scope preparation it was unknown whether KDHE would require special testing to correlate the inactivation of MS2 coliphage with poliovirus inactivation using AOPs such as hydroxyl radicals in a specialized testing laboratory. This testing would represent a Special Testing event. These services are not included in this Agreement.

#### **2.0 CITY AND CONSULTANT'S RESPONSIBILITIES**

- 2.1 SUBCONSULTANT may rely upon the accuracy and completeness of all reports, data, and other information furnished by the CITY to the SUBCONSULTANT. SUBCONSULTANT may use such reports, data, and information in performing or furnishing services under this Agreement.
- 2.2 Provide access to and make all provisions for SUBCONSULTANT to enter upon public and private property as required for SUBCONSULTANT to perform services under this Agreement.
- 2.3 Provide labor and safety equipment to operate existing processes and equipment as required by the SUBCONSULTANT.

#### **3.0 SUBCONSULTANT'S EXCLUSIONS**

- 3.1 SUBCONSULTANT shall not be responsible for the following:
  - 3.1.1 Kansas Division of Water Resources for a Temporary Term Permit for the acquisition of water from the Little Arkansas River to obtain water in sufficient quantities and duration for SUBCONSULTANT to complete all of the services herein.
  - 3.1.2 Purchase or rental, and supply and shipping, of pilot equipment and installation thereof.
  - 3.1.3 Purchase, supply, and installation of materials and equipment necessary for SUBCONSULTANT to complete all of the services herein.
  - 3.1.4 Purchase and supply of all spiking chemicals necessary for SUBCONSULTANT to complete all of the services herein.
  - 3.1.5 Analytical testing in support of pilot activities and as defined by the testing protocol as adjusted throughout the services contained herein.

### 3.0 TIME PERIOD FOR PERFORMANCE

The time periods for the performance of SUBCONSULTANT's Services as set forth in Article 2 of said Agreement are as follows:

Contract Start: \_\_\_\_\_, 2009

Contract Completion: October 1, 2009

### 4.0 METHOD OF PAYMENT

The method of payment for Services rendered by SUBCONSULTANT shall be as set forth below:

In the SUBCONSULTANT's SERVICES performed under the work herein described in Exhibit B, the CITY agrees to pay the SUBCONSULTANT as follows:

For work done by the SUBCONSULTANT at the hourly billing rate for the category of the individual performing the work, for all time directly chargeable to the project plus actual out-of-pocket expense cost. The SUBCONSULTANT's schedule of Hourly Billing Rates is attached as Exhibit D.

Actual out-of-pocket expense costs are all costs other than SUBCONSULTANT's labor costs that are incurred during the progress of the work. The actual out-of-pocket expense costs include: air fare, automobile rental if required, mileage charges, parking, tolls, taxi, meals, lodging, telephone, printing and reproduction costs, and other miscellaneous costs incurred specifically for this project.

The charges for rental of field equipment such as analytical instruments, if provided by SUBCONSULTANT, will be at the SUBCONSULTANT's regular rates.

For work done by subcontract or consultants, at the actual cost to the SUBCONSULTANT of such services.

The total cost of all SUBCONSULTANT's SERVICES (Exhibit B) shall not exceed \$325,000.00.

Costs for TASK 6 – SPECIAL STUDIES are not included in this Agreement.

Wichita Water Utilities  
City of Wichita, Kansas  
ASR Program - Phase II Projects Consulting Services  
Exhibit C  
Advance Oxidation Products Pilot Testing  
Fee Estimate

Task	Subtask	Item	Prtn. \$240 hrs	Project Mgr. \$190 hrs	Sr. Tech. Eng. \$200 hrs	Eng. 07 \$100 hrs	Eng. 4/5 \$135 hrs	Eng. 2/3 \$105 hrs	Sr. Technician \$185 hrs	Draft \$80 hrs	Admin \$60 hrs	Total Labor Hrs	Total Labor \$	DP \$	ODC \$	Totals \$
General Tasks	G1	Project Management	24	96							40	160	\$26,400	\$	\$	\$
	G2	Protocol QA/QC	4	8	8						16	36	\$5,760	\$	\$	\$
	G3	Report QA/QC	4	8	24						24	60	\$10,080	\$	\$	\$
		SUBTOTAL														\$
Task 1 - Project Kickoff Meeting and Workshop			8	12	12	16	8	8				64	\$12,160	\$	\$	\$
Task 2 - UFA/OP Equipment and Ancillary Equipment	2.1	UFA/OP Ancillary Equipment Identification and Sizing	4	8	8	24			16	8	4	72	\$11,200	\$	\$	\$
	2.2	Develop Ancillary Materials and Equipment Estimate	4	8	8	24					4	48	\$8,640	\$	\$	\$
	2.3	Ancillary Materials and Equipment Workshop	4	8	8	4					4	28	\$5,600	\$	\$	\$
	2.4	Negotiate Rental Agreements	4	8	40						4	56	\$9,120	\$	\$	\$
	2.5	Pilot Plant Setup Assistance	4	8	40						4	60	\$11,200	\$	\$	\$
		SUBTOTAL														\$
Task 3 - UFA/OP Testing Protocol and Workshop	3.1	Pilot Plant Tasting Protocol	4	24	10	24	24				8	124	\$24,600	\$	\$	\$
	3.2	Protocol Workshop	8	16	12	16	8					60	\$12,000	\$	\$	\$
		SUBTOTAL														\$
Task 4 - UFA/OP Pilot Plant Testing			8	60	30	120	360					584	\$91,500	\$	\$	\$
Task 5 - UFA/OP Pilot Study Report	5.1	Draft Pilot Study Report	4	24	40	40	40		24		20	192	\$32,640	\$	\$	\$
	5.2	Draft Report Workshop	4	8	8	4					4	28	\$5,600	\$	\$	\$
	5.3	KOHE Report Workshop	4	8	8	4					4	28	\$5,600	\$	\$	\$
	5.4	Final Report	4	20	20	8	8		8		20	88	\$14,960	\$	\$	\$
		SUBTOTAL														\$
TOTAL PILOT TESTING SERVICES			96	324	240	364	448	8	48	8	152	1,688	\$ 288,600	\$ 7,500	\$ 28,700	\$ 325,000

**City of Wichita**  
**City Council Meeting**  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** Water Treatment Plant Residuals Project, Pipeline A – Change Order

**INITIATED BY:** Water Utilities

**AGENDA:** Consent

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**Recommendation:** Approve Change Order No. 1 with Dondlinger & Sons Construction Co., Inc. for additional work on the Water Treatment Plant Residuals Project.

**Background:** On February 10, 2009, the City Council approved a Contract with Dondlinger & Sons Construction Co., Inc. to construct pipelines A and B for the Water Treatment Plant Residuals Project. Pipeline A will tie the Residuals Handling Facility to the existing 16-inch residuals pipeline at the intersection of 13<sup>th</sup> Street and Amidon.

**Analysis:** The Water Treatment Plant uses lime as a softening agent and ferric sulphate as a coagulant in the water treatment processes. These chemicals bind to the sediments and impurities in the water, causing them to be heavier and allowing them to settle and be removed. The residuals that settle are then pumped out of the basins to either the Residuals Handling Facility, or recycled to the head of the plant where the chemical residual continues to provide treatment.

The plans for the new pipeline and existing piping layout for the Water Treatment Plant were created from multiple plans for construction and alterations over the years. The plan set was reviewed by Staff and appeared to be correct; however, when construction began, the piping layout as shown in the plans was not correct. Without an alteration to the project, recycling of residuals to the head of the plant would not continue. Change Order No. 1 provides for the addition of a valve to redirect the residuals back to the head of the plant.

**Financial Consideration:** The original Contract for pipeline A was \$383,069. Change Order No. 1 will increase the Contract by \$37,688 for a total of \$420,757 amounting to 8.96 percent. Funds are available in CIP W-014, Water Treatment Plant Residuals.

**Goal Impact:** The Change Order will ensure efficient infrastructure by providing reliable, compliant and secure utilities. The project helps reduce chemical treatment costs at the Water Treatment Plant by recycling residuals into the treatment process.

**Legal Considerations:** The Change Order has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the Change Order and authorize the necessary signatures.

**Attachments:** Preliminary Estimate Worksheet  
Change Order No. 1 with Dondlinger & Sons Construction Co., Inc.

**CONTRACT  
for  
CLOSED CAPTIONING SERVICES FOR CITY 7  
BLANKET PURCHASE ORDER NUMBER BP930059**

**THIS CONTRACT** entered into this 23<sup>rd</sup> day of June, 2009, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **CAPTION COLORADO, LLC** (Vendor Code Number – 823559-001), whose principal office is at 5690 DTC Blvd., Suite 500W, Greenwood Village, CO 80111, Telephone Number (800) 775-7838, hereinafter called "**VENDOR**".

**WITNESSETH:**

**WHEREAS**, the **CITY** has solicited proposals for **Closed Captioning Services for City 7** (Formal Proposal – FP930014) [Commodity Code Number 91525]; and

**WHEREAS**, **VENDOR** has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **Scope of Services.** **VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP930014 [Commodity Code Number 91525] which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP930014, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation.** **CITY** agrees to pay to **VENDOR** the following **unit price** for **Closed Captioning Services for City 7** for Formal Proposal – FP930014 [Commodity Code Number 91525] for the City Manager's Office/ Communications Division as shown below as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of March 6, 2009, and as approved by the City Council on June 23, 2009.

**Closed Captioning Services for City Council Meetings - \$90.00 per Hour to be billed in 15 minute increments. Payment to contractor will be for actual length of City Council Meetings including system test up to 30 minutes prior to and 15 minutes after City Council Meeting.**

**One Time Purchase of Link Encoder Model PCE-845D \$995.00**

**TOTAL CONTRACT AMOUNT NOT TO EXCEED \$17,000.00 ANNUALLY**

3. **Term.** The term of this contract shall be effective from **July 1, 2009 through June 30, 2010** with options to renew the contract under the same terms and conditions for four (4) successive one (1) year terms by mutual agreement of both parties. This contract is subject to cancellation by the city, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR**.

4. **Indemnification and Insurance.**

a. **VENDOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

1. **Comprehensive General Liability**

Covering premises---operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 Each Occurrence \$500,000 Each Aggregate
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Property Damage Liability	\$500,000 Each Occurrence \$500,000 Each Aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 Each Occurrence \$500,000 Each Aggregate
---	---

2. **Comprehensive Automobile Liability**

All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability	\$500,000 Each Accident
Property Damage Liability	\$500,000 Each Accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 Each Accident
---	-------------------------

3. **Workers' Compensation**

**Statutory**

Employers Liability	\$100,000 Each Accident \$500,000 Aggregate \$100,000 Occupational Disease
---------------------	--

The Insurance Certificate must contain the following:

A. Statement that the Contractual Liability includes the Liability of the City of Wichita assumed by the Contractor in the contract documents.

B. Cancellation - Should any of the above policies be canceled before the expiration date thereof, the issuing company will mail ten (10) days written notice to certificate holder.

5. **Independent Contractor.** The relationship of the **VENDOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **VENDOR** shall be considered an employee of the **CITY**.

6. **Compliance with Laws.** **VENDOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

7. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the **CITY**.

8. **Non-Discrimination.** **VENDOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment/Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

9. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.

10. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

11. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

12. **Representative's Authority to Contract.** By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.



**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

**ATTEST:**

**CITY OF WICHITA, KANSAS**

\_\_\_\_\_  
Janis Edwards  
Deputy City Clerk

\_\_\_\_\_  
Carl G. Brewer  
Mayor

**APPROVED AS TO FORM:**

**CAPTION COLORADO, LLC**

\_\_\_\_\_  
Gary E. Rebenstorf  
Director of Law

\_\_\_\_\_  
*[Signature]*  
Signature

\_\_\_\_\_  
Randy Holmsted  
Print Name

\_\_\_\_\_  
Vice President  
Title (Managing Member)

## **EXHIBIT A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita  
City Council Meeting  
June 23, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Change Order: Emporia at William Intersection Improvement  
(District VI)

**INITIATED BY:** Department of Public Works

**AGENDA:** Consent

-----

**Recommendation:** Approve the change order.

**Background:** On April 7, 2009, the City Council approved a construction contract with Cornejo & Sons, Inc. for street improvements in the Intrust Bank Arena area. The project includes reconstruction of the intersection of Emporia at William. The alignment of a new storm sewer needs to be lowered in order to avoid a conflict with a Westar duct bank. In addition, several water services to adjacent business will be larger than expected.

**Analysis:** A change order has been prepared for the cost of the additional work. Funding is available within the project budget.

**Financial Considerations:** The total cost of the additional work is \$18,989 with \$13,750 paid by Sedgwick County and Tax Increment funds; and \$5,239 by the Water Utility. The original contract amount is \$1,490,529. This change order represents 1.27% of the original contract amount.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by improving streets in the Intrust Bank Arena area.

**Legal Considerations:** The Law Department has approved the change order as to legal form.

**Recommendation/Action:** It is recommended that the City Council approve the change order and authorize the necessary signatures.

**Attachments:** Change Order.

May 12, 2009  
**CHANGE ORDER**

**To:** Cornejo & Sons, Inc.

**Project:** Emporia, Waterman to William;  
William, Emporia to Commerce; St. Francis,  
William to Douglas

**Change Order No.:** 1

**Project No.:** 472-84744

**Purchase Order No.:** 930346

**OCA No.:** 707001/636208/620526/620527

**CHARGE TO OCA No.:** 707001=\$13,750.00  
636208=\$ 5,239.00

**PPN:** 209466/778598/668645/668646

**Please perform the following extra work at a cost not to exceed \$18,989.00**

The storm water system in the Emporia and William intersection requires lowering due to a waterline and Westar duct bank conflict. Lower storm water system and revise manhole/inlet structures per Transmittal 00001.

The Water Department requests revising water services to businesses along St. Francis. Work also will require encasing the existing sanitary sewer.

<b>CIP Budget Amount: \$2,085,696.00 (707001);</b> \$ 65,000.00 (636208)	<b>Original Contract Amt.: \$1,490,528.75</b>
<b>Consultant: PEC</b>	<b>Current CO Amt.: \$18,989.00</b>
<b>Exp. &amp; Encum. To Date: \$1,438,610.54 (707001)</b> \$ 28,259.10 (636208)	<b>Amt. of Previous CO's: \$0.00</b>
<b>CO Amount: \$18,989.00</b>	<b>Total of All CO's: \$18,989.00</b>
<b>Unencum. Bal. After CO: \$633,335.46 (707001)</b> \$ 31,501.90 (636208)	<b>% of Orig. Contract / 25% Max.: 1.27%</b> <b>Adjusted Contract Amt.: \$1,509,517.75</b>

**Recommended By:**

**Approved:**

\_\_\_\_\_  
Greg Baalman, P.E.  
Construction Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jim Armour, P.E.  
City Engineer

\_\_\_\_\_  
Date

**Approved:**

**Approved:**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Carrier, P.E.  
Director of Public Works

\_\_\_\_\_  
Date

**Approved as to Form:**

**By Order of the City Council:**

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law

\_\_\_\_\_  
Date

\_\_\_\_\_  
Carl Brewer  
Mayor

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_  
City Clerk

# Change Order

## No. 1

Date of Issuance: May 19, 2009

Effective Date: \_\_\_\_\_

Project: <b>Water Plant Residuals Disposal Improvements – Pipeline A</b>	Owner: <b>City of Wichita, Kansas</b>	Owner's Contract No.: <b>448-753909</b> <b>OCA 633737</b>
Contract: <b>Dondlinger Construction Co., Inc.</b>		Date of Contract: <b>08116</b>
Contractor: <b>Dondlinger Construction Co., Inc.</b>		Engineer's Project No.: <b>08116</b>

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

**Add valves to redirect seed sludge back to the head of the plant.**

Attachments: (List documents supporting change):

**A detail drawing of the change.**

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price:  <b><u>\$383,069.25</u></b>	Original Contract Times: <input type="checkbox"/> Working days <input type="checkbox"/> Calendar days Substantial completion (days or date): _____ Ready for final payment (days or date): _____
[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:  <b><u>\$ 37,688.00</u></b>	[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
Contract Price prior to this Change Order:  <b><u>\$383,069.25</u></b>	Contract Times prior to this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
[Increase] [Decrease] of this Change Order:  <b><u>\$ 37,688.00</u></b>	[Increase] [Decrease] of this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
Contract Price incorporating this Change Order:  <b><u>\$420,757.25</u></b>	Contract Times with all approved Change Orders: Substantial completion (days or date): _____ Ready for final payment (days or date): _____

RECOMMENDED:

ACCEPTED:

ACCEPTED:

By: [Signature]  
Engineer (Authorized Signature)

By: \_\_\_\_\_  
Owner (Authorized Signature)

By: \_\_\_\_\_  
Contractor (Authorized Signature)

Date: 5-19-09

Date: \_\_\_\_\_

Date: \_\_\_\_\_

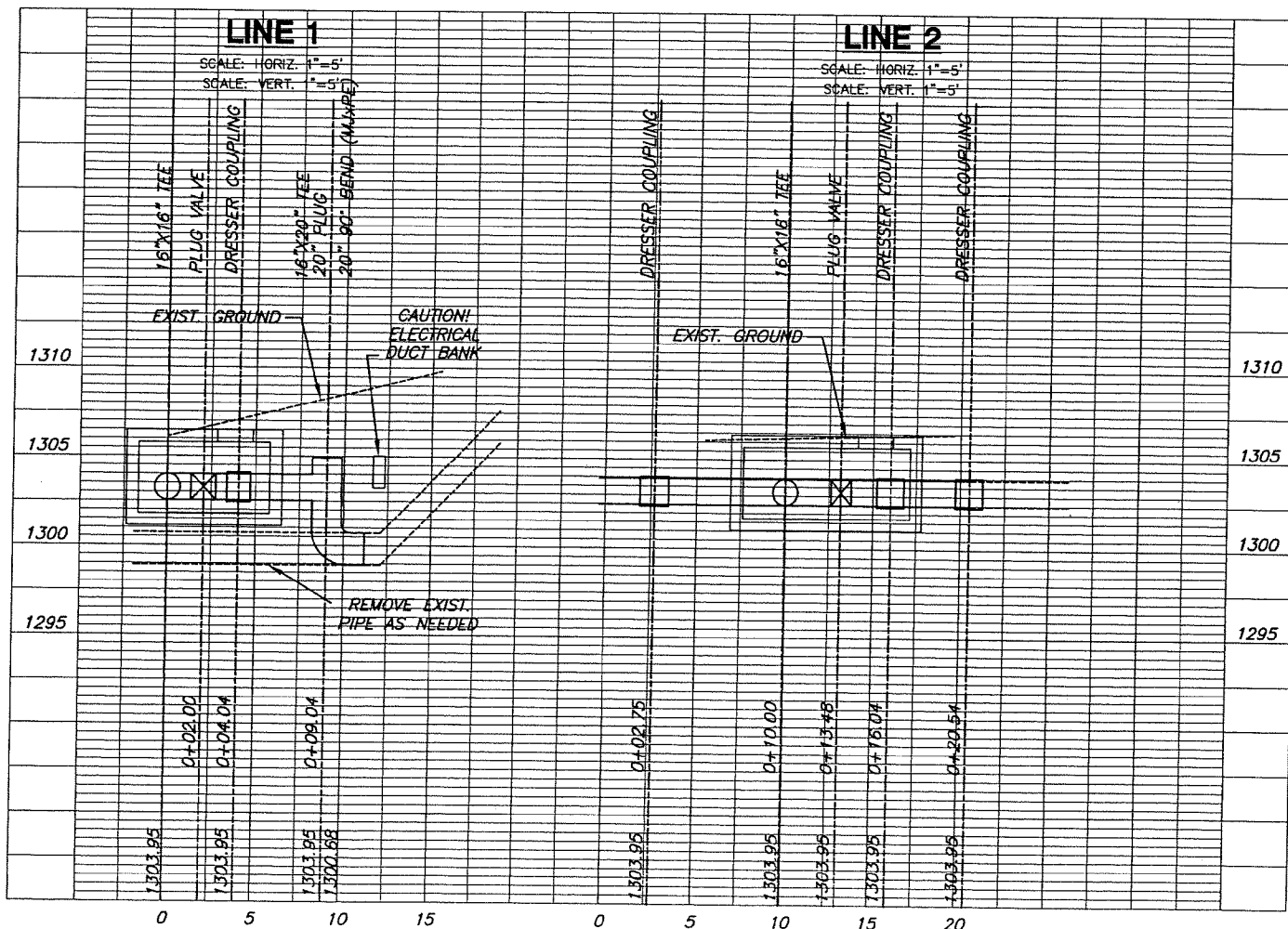
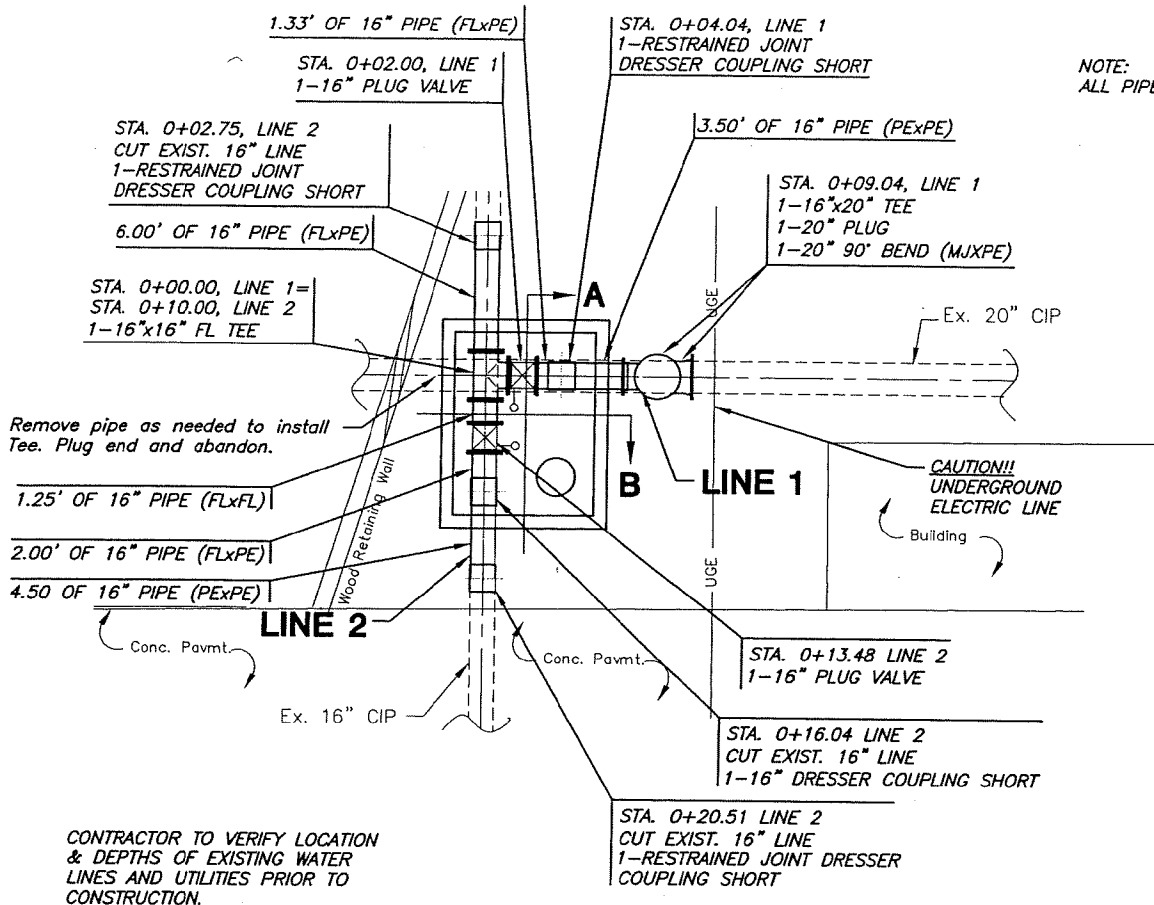
Approved by Funding Agency (if applicable): \_\_\_\_\_

Date: \_\_\_\_\_

EJCDC No. C-941 (2002 Edition)

00815-1

Prepared by the Engineers' Joint Contract Documents Committee and endorsed by the Associated General Contractors of America and the Construction Specifications Institute.





Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Approved:  
Dondlinger & Sons Construction Co., Inc

Approved:  
City of Wichita

By: \_\_\_\_\_

By: \_\_\_\_\_  
Carl Brewer, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Gary Rebenstorf, Director of Law

## PRELIMINARY ESTIMATE WORKSHEET

Preliminary Estimate of the cost of improving/constructing

Water Plant Residuals Disposal Improvements: Pipeline Part A - CO #1

	Quantity		Unit Price	Total
<b>Water Items</b>				
WL Pipe 16"	30	lf	200.00	6,000.00
Plug Valve 16"	2	ea	10,000.00	20,000.00
Valve Vault	1	ea	10,000.00	10,000.00
Site Clearing & Restoration	1	LS	5,000.00	5,000.00
Project Seeding	1	LS	1,000.00	1,000.00
			Sub-total	\$42,000.00
Engineering				
Administration 2%				
Publication				
Material from Water & Sewer				
Contingency				
			Total	\$42,000.00

City of Wichita  
City Council Meeting  
June 23, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Change Order: Emporia at William Intersection Improvement  
(District VI)

**INITIATED BY:** Department of Public Works

**AGENDA:** Consent

-----

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The storm water system in the Emporia and William intersection requires lowering due to a waterline and Westar duct bank conflict. Lower storm water system and revise manhole/inlet structures per Transmittal 00001.

The Water Department requests revising water services to businesses along St. Francis. Work also will require encasing the existing sanitary sewer.

<b>CIP Budget Amount: \$2,085,696.00 (707001);</b> \$ 65,000.00 (636208)	<b>Original Contract Amt.: \$1,490,528.75</b>
<b>Consultant: PEC</b>	<b>Current CO Amt.: \$18,989.00</b>
<b>Exp. &amp; Encum. To Date: \$1,438,610.54 (707001)</b> \$ 28,259.10 (636208)	<b>Amt. of Previous CO's: \$0.00</b>
<b>CO Amount: \$18,989.00</b>	<b>Total of All CO's: \$18,989.00</b>
<b>Unencum. Bal. After CO: \$633,335.46 (707001)</b> \$ 31,501.90 (636208)	<b>% of Orig. Contract / 25% Max.: 1.27%</b> <b>Adjusted Contract Amt.: \$1,509,517.75</b>

**Recommended By:**

**Approved:**

\_\_\_\_\_  
Greg Baalman, P.E.  
Construction Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jim Armour, P.E.  
City Engineer

\_\_\_\_\_  
Date

**Approved:**

**Approved:**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Carrier, P.E.  
Director of Public Works

\_\_\_\_\_  
Date

**Approved as to Form:**

**By Order of the City Council:**

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law

\_\_\_\_\_  
Date

\_\_\_\_\_  
Carl Brewer  
Mayor

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_  
City Clerk

**CITY OF WICHITA**  
**City Council Meeting**  
June 23, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Acquisition of a Temporary Easement at the Northeast Corner of Murdock and Mt. Carmel for the 9<sup>th</sup> Street Drainage Outfall Project. (District VI)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** The 9<sup>th</sup> Street Drainage Outfall project will provide additional storm water drainage for the area bounded by West Street, Central, 13<sup>th</sup> Street and McLean. The project requires the acquisition of easements from 10 tracts. One of the impacted parcels is located at the northeast corner of Murdock and Mt. Carmel. The site consists of 8,250 square feet and is zoned for residential use. The site is unimproved. The project requires a 3,000 square foot temporary easement and the removal of numerous trees including three mature trees.

**Analysis:** The property owner accepted the offer, based on market comparisons, of \$4,500. This amount is comprised of \$180 for the temporary construction easement (\$0.06 per square foot) and \$4,320 for the mature tree row.

**Financial Considerations:** The funding source for the project is General Obligation Bonds. A budget of \$4,900 is requested. This includes \$4,500 for acquisition and \$400 for administrative and filing fees.

**Goal Impact:** The acquisition of this parcel is necessary to ensure efficient infrastructure by improving the storm water drainage and control through a developed part of the City.

**Legal Considerations:** The Law Department has approved the contract and easement as to form.

**Recommendations/Actions:** It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Contract for the Conveyance of Real Estate and 3) Authorize the necessary signatures.

**Attachments:** Tract map, temporary construction easement and real estate purchase agreement.

MOUNT CARMEL AVE.

MICHAELS J. JOHNSON SR. ETAL  
W 150' LOT 10  
D-10233

20.0'

150'(D)

MURDOCK AVE.

SCALE: 1"=30'






**LEGAL DESCRIPTION:**

**Right of Entry / Temporary Construction Easement:**

The south 20.00 feet Lot 10, Kauffman Gardens,  
Sedgwick County, Kansas, EXCEPT the east 150 feet  
thereof.

**LEGEND:**

-  Temporary Construction Esmt.  
Area = 3,000 s.f.
-  Easement Area = none
-  Right of Way / Property line



**Owner:**

Michael J. Johnson, Sr. etal  
Suite #6 1337 N. Meridian  
Wichita, KS 67203

**Tax Key Property Identification:**

D 10233

**MKEC**  
ENGINEERING  
CONSULTANTS, INC.

411 N. WEBB ROAD  
WICHITA, KS. 67206  
316-684-9600

West Street to Arkansas River  
9th Street Storm Sewer Outfall  
PROJECT NAME

TRACT MAP #10 - Easement Exhibit  
SHEET TITLE

JRA DESIGN BY:	BDL DRAWN BY:	JRA / JCM CHECKED BY:
Dec. 2008 DATE	06205 v10 JOB NO.	1 / 1 SHEET/OF

# TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this 5TH day of JUNE, 2009, by and between Michael J. Johnson, Sr., herein referred to as "Grantor", heirs and assigns and the City of Wichita, Kansas, a municipal corporation, herein referred to as "Grantee".

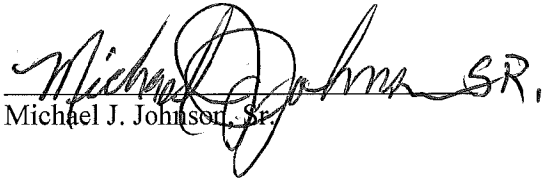
WITNESSETH: That the said Grantor, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby grant unto the Grantee a temporary right-of-way easement for the purpose of constructing utility improvements and associated site work over, along and under the following described real estate situated in Sedgwick County, Kansas, to wit:

The south 20.00 feet of Lot 10, Kauffman Gardens, Wichita, Sedgwick County, Kansas except the east 150 feet thereof.

The Grantee hereby covenants and agrees to indemnify, protect, and save harmless the Grantor, its successors and assigns, of, from, against and in respect of all liabilities, losses, claims, damages, punitive damages, causes of action, lawsuits, demands, judgments, settlement payments and costs and expenses (including without limitation reasonable attorney's fees and disbursements of every kind, nature and description) caused by or arising out of the use of the premises by the Grantee, its employees, agents or contractors.

Said easement shall expire upon completion of the stormwater system and paving plans and specifications of the City Engineer of the City of Wichita, Kansas.

IN WITNESS WHEREOF: Grantor(s) have signed these presents the day and year first written.

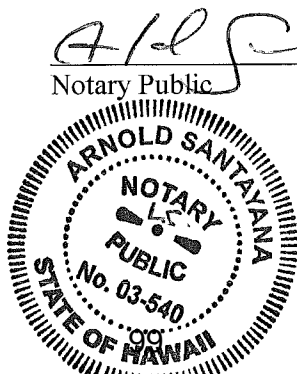
  
Michael J. Johnson, Sr.

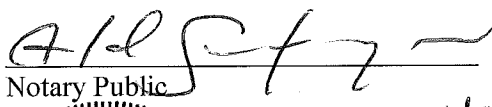
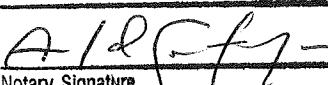
STATE OF HAWAII )  
CITY OF ) ss:  
COUNTY OF HONOLULU )

BE IT REMEMBERED, that on this 5TH day of JUNE, 2009, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael J. Johnson, Sr. personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

My Appointment Expires: SEPT 21, 2011



  
Notary Public  
Doc. Date: 6/5/09 # Pages: 1  
Arnold Santayana FIRST Second Circuit  
Doc. Description TEMPORARY CONSTRUCTION EASEMENT  
 6/5/09  
Notary Signature Date  
NOTARY CERTIFICATION

## REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 5 day of JUNE, 2009 by and between Michael J. Johnson, Sr., party of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a temporary construction easement the following described real property, situated in Sedgwick County, Kansas, to-wit:

The South 20.00 feet of Lot 10, Kauffman Gardens Addition, to Wichita, Sedgwick County, Kansas except the East 150 feet thereof.

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of Four Thousand Five Hundred Dollars and Zero Cents (\$4,500.00) in the manner following to-wit: cash at closing.
3. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
4. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the closing date. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.
5. The Seller further agrees to convey the above-described premises with all the improvements including trees and shrubs located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted. To the degree possible, Buyer shall leave trees and shrubs if possible but the Seller recognizes that some or all of the trees and shrubs in the easement will be removed for the project.
6. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.
7. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before July 31, 2009 subject to the conditions of Item 10 below.
8. Possession to be given to Buyer at closing
9. Closing costs shall be paid 100% by Buyer and 0% by Seller.
10. Site Assessment



A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

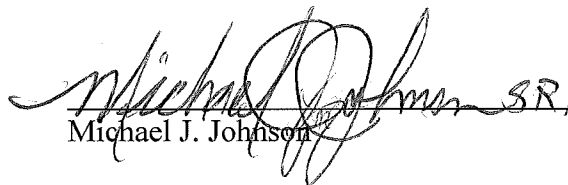
**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**BUYER**

By Direction of the City Council

\_\_\_\_\_  
Carl Brewer, Mayor

**SELLER**

  
Michael J. Johnson SR.

**ATTEST:**

\_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

**CITY OF WICHITA**  
**City Council Meeting**  
June 23, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Partial Acquisition of 1601 South Hydraulic for the Hydraulic: Harry to Kellogg Improvement Project (District I)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** On November 20, 2007, the City Council approved a project to improve Hydraulic from Kellogg to Harry. Hydraulic is currently two lanes with on-street parking on the west side. Hydraulic will be improved to three lanes with two through lanes and a center two-way left turn lane. Improved traffic signals will be installed at Lincoln and Harry. The storm water sewer system will be improved and five foot wide sidewalks will be installed on both sides of Hydraulic. The project requires a ten foot by ten foot triangle from the property at the southwest corner of Hydraulic and Harry. The property at 1601 South Harry is improved with a convenience store with gasoline sales. The acquisition will require the relocation of the business sign and the closure of one drive on Hydraulic. The acquisition does not impact the gasoline supply system or the improvements.

**Analysis:** The 50 square foot tract was valued at \$400 (\$8.00 per square foot) based on the market value of similar properties. The owner agreed to accept the offer. The cost to relocate the business sign will be handled separately as a relocation item.

**Financial Considerations:** The funding sources for the project are General Obligation Bonds. A budget of \$6,500 is requested. This includes \$400 for the acquisition, \$6,000 to move the sign and \$100 for closing costs and title insurance.

**Goal Impact:** The acquisition of this parcel addresses efficient infrastructure by allowing the improvement of traffic flow and drainage along a major transportation corridor.

**Legal Considerations:** The Law Department has approved the contract as to form.

**Recommendations/Actions:** It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize the necessary signatures.

**Attachments:** Tract map, aerial and real estate purchase agreement.

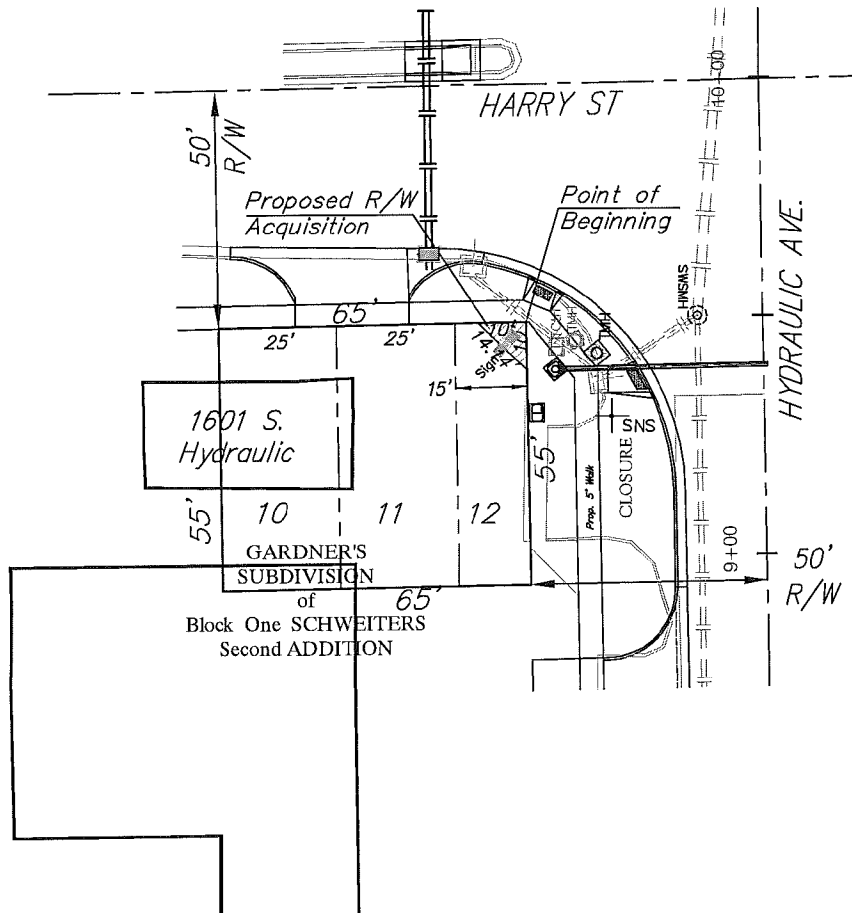
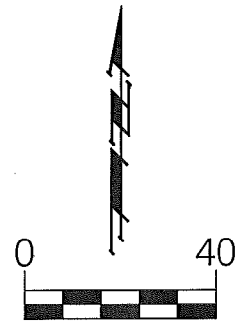
## LEGAL DESCRIPTION:

## EXHIBIT

A Proposed Street right-of way in Lot 12, Gardener's Subdivision of Block 1 Schweiters 2nd Addition to Wichita, Sedgwick County, Kansas, described as follows:

That part of Lot 12, Gardner's Subdivision of Block One Schweiters Second Addition to Wichita, Sedgwick County, Kansas described as beginning at a point 10.00 feet west of the east line of said Lot 12 as measured parallel with the north line of said Lot 12 and 20.00 feet south of the north line of said Lot 12 as measured parallel with the east line of said Lot 12, said point also being on the south line of Harry St. and on the west line of Hydraulic Ave.; thence southerly along the west line of said Hydraulic Ave.; 10.00 feet; thence northwesterly, 14.14 feet to a point on the south line of said Harry St., said point being 10.00 feet west of the point of beginning; thence easterly along the south line of said Harry St., 10.00 feet to the point of beginning.

Containing 50.00 Sq. Ft., more or less



Owner:  
Kenny Huy Nguyen  
1601 S. Hydraulic  
Wichita, Kansas  
67211-4500

Project Number 07-10-E968

E:eng/Hydraulic Kellogg to Harry Pave\Exhibits\1601 S. Hydraulic



**Baughman Company, P.A.**

315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149

**Baughman**

ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

5-7-09



Identified Features



Historic Districts



Old Town Delano Overlay District



NO



YES



Property Parcels



Subdivisions



Roads



State Highway



US Federal Highway



Interstate



KTA



Arterial



Collector



Minor



Ramp



Railroads



Quarter Section



Waterways



Streams



Historic Sites



REGIONAL



STATE/NATIONAL



STATE



Historic Environs



Parks



Airports



SDERASTER.S-



DEDATA.ORTH-



O

City Limits



Andale



Bel Aire



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

PROJECT: Hydraulic – Kellogg to Harry

DATE: May 20, 2009

COUNTY: Sedgwick

TRACT NO.: 4

**CITY OF WICHITA, KANSAS****CONTRACT FOR CONVEYANCE**  
**OF REAL ESTATE BY WARRANTY DEED**

THIS AGREEMENT made and entered into this \_\_\_\_ day of 2009 by and between:

Kenny Huy Nguyen  
 1726 North St. Clair  
 Wichita, Kansas 67203

landowner(s), and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A right of way acquisition described as follows:

That part of Lot 12, Gardner's Subdivision of Block One, Schweiter's Second Addition to Wichita, Sedgwick County, Kansas described as beginning at a point 10.00 feet west of the east line of said Lot 12 as measured parallel with the north line of said Lot 12 and 20.00 feet south of the north line of said Lot 12 as measured parallel with the east line of said Lot 12, said point also being on the south line of Harry Street and on the west line of Hydraulic Avenue; thence southerly along the west line of said Hydraulic Avenue; 10.00 feet; thence northwesterly, 14.14 feet to a point on the south line of said Harry Street, said point being 10.00 feet west of the point of beginning; thence easterly along the south line of said Harry Street 10.00 feet to the point of beginning.

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following

amount within ten days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 50 (Sq. Ft.) for right-of-way	\$400.00
Cost to Cure:	\$ 0.00
Damages including but not limited to:	\$ 0.00

**TOTAL      \$400.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

**IN WITNESS WHEREOF** The parties have hereunto signed this agreement the day and year first above written.

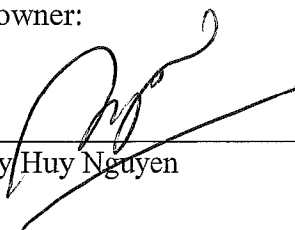
City of Wichita  
County of Sedgwick  
State of Kansas

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Landowner:

By  \_\_\_\_\_  
Kenny Huy Nguyen

Approved as to form:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

MEMORANDA

Exact and full name of owner, as it appears of record:

Kenny Huy Nguyen

REMARKS:

RECOMMENDED BY:

City of Wichita  
City Council Meeting  
June 23, 2009

**To:** Mayor and City Council

**Subject:** Resolution Considering a Second Amendment of a Redevelopment Plan, Douglas and Hillside Redevelopment District (District II)

**Initiated By:** Office of Urban Development

**Agenda:** New Business

---

**Recommendations:** Adopt the Resolution stating the City is considering a second amendment of the Project Plan for the Douglas and Hillside Redevelopment District.

**Background:** On August 15, 2006, the City Council adopted an ordinance establishing a redevelopment district in the area of Douglas Avenue and Hillside, for the purpose of providing tax increment financing (TIF) to pay a portion of the costs of constructing a commercial redevelopment project in that area. On February 13, 2007, the City Council approved the TIF Project Plan. On January 15, 2008, the City Council approved an amendment to the TIF Project Plan and Development Agreement. Since that time, College Hill Urban Village, LLC (“Developer”) has made changes to the redevelopment project and has requested an amendment to the TIF Project Plan and Development Agreement in order to proceed with the project. Amendment of TIF project plans requires holding a new public hearing at a time and place set by resolution by the City Council.

**Analysis:** The TIF Project Plan and Development Agreement approved by the City Council consisted of land acquisition, demolition of remaining structures in the Project Area and development of a 14-story high-rise tower, with 87 residential condominium units and underground parking, over 50 brownstone-type row houses with built-in 2-car garages, a four-story building of residential flats and retail buildings with loft apartments above, with adjacent parking lots. The original Project Plan also included a roundabout as an aesthetic feature.

The January 15<sup>th</sup>, 2009, amendment included removing a roundabout due to Fire Department access concerns and replacing it with decorative entry features at the same cost. The first amendment also included the purchase of three additional properties within the redevelopment district using TIF funds. The amended Project Plan increased the residential condominium units from 87 to 94 and the Brownstones from 50 to 65; phase two included 3,800 sq ft of retail space; the Clubhouse/Pool was removed from phase three and the Project Area was increased to include the properties that were to be purchased. The additional property and design change increased the TIF eligible development costs by \$1,180,000 to \$5,630,000.

The Developer has recently made additional changes to the project site plan based on changing construction costs and real estate market conditions. The underground parking for the condominium tower has been replaced with a parking garage due to the high cost related to constructing a below ground parking structure. The Brownstone complex surrounding the tower will be reduced to nine units to accommodate the parking garage. The Project Plan will reduce the total number of Brownstones by 21; decrease the units in the condominium tower from 94 to 83; eliminate 1,500 sq.ft. of retail in phase 1;



increase the number of lofts from 5 to 15 and increase the number of flats from 29 to 42. The value of all the structures has increased based on recent sales of Brownstone and condominium units.

The Developer will no longer be purchasing the property at 3225 Victor Place. The cost of the purchase, \$150,000, will be re-allocated from land acquisition to public improvements in the TIF eligible expenses. No increase in the limit of TIF funding is required to support the changes.

**Financial Considerations:** The current TIF-bond financing structure calls for the issuance of general obligation bonds, which are secured solely by TIF revenues generated by the property within the TIF district.

**Goal Impact:** Economic Vitality and Affordable Living, Quality of Life, Core Area and Neighborhood. Redevelopment of blighted areas, and declining areas, are needed to avoid economic stagnation. Business prospects and workers seeking to relocate are attracted to a new city that takes care of its older sections.

**Legal Considerations:** The proposed reduction of Brownstones, removal of underground parking and additional changes are of sufficient magnitude to require amendment of the TIF Project Plan. Under state law, TIF project plan amendments require public hearings, which must be set by resolution and published on two consecutive weeks in the City's official newspaper. The attached resolution, setting a public hearing for July 7, 2009, has been reviewed by the Department of Law and approved as to form.

**Recommendation/Action:** It is recommended that City Council adopt the resolution setting a public hearing on July 7, 2009 to consider a second amendment to the Project Plan for the Douglas and Hillside Redevelopment District, authorize the necessary signatures and direct the City Clerk to cause the resolution to be published on two consecutive weeks prior to the date set for the public hearing.

**Attachment(s):** Resolution Stating the City of Wichita is considering an amendment of the Project Plan for the Douglas and Hillside Redevelopment District.

Resolution No. 09-185

**A RESOLUTION STATING THE CITY OF WICHITA IS CONSIDERING  
A SECOND AMENDMENT OF A REDEVELOPMENT PROJECT PLAN  
FOR THE DOUGLAS AND HILLSIDE REDEVELOPMENT DISTRICT.**

WHEREAS, by Ordinance No. 47-098 passed August 15, 2006, and published August 17, 2006, the City of Wichita (the “City”) established a redevelopment district pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”), known as the Douglas and Hillside Redevelopment District (the “Redevelopment District”); and

WHEREAS, the City, proposed a Redevelopment Project within the Douglas and Hillside Redevelopment District, consisting of a 14-story high-rise tower, with 87 residential condominium units and underground parking, over 50 brownstone-type row houses with built-in 2-car garages, a four-story building of residential flats and retail buildings with loft apartments above, with adjacent parking lots; and

WHEREAS, in accordance with the provisions of the Act, a public hearing was held on February 6, 2007, on the Redevelopment Project Plan dated December 7, 2006 (the “Project Plan”); and

WHEREAS, the City, by Ordinance No. 47-342 passed on February 13, 2007, adopted the Project Plan for the Redevelopment Project; and

WHEREAS, the City, proposed an amendment to the Redevelopment Project to increase the size of the project area and increase the amount of the Reimbursable Expenditures, as defined in the Project Plan, from \$4,450,000 to \$5,630,000, plus actual interest and financing costs; and

WHEREAS, in accordance with the provisions of the Act, a public hearing was held on January 8, 2008, on an amendment to the College Hill Urban Village Project Plan; and

WHEREAS, the City, by Ordinance No 47-753 passed on January 15, 2008, adopted an amendment to the Project Plan; and

WHEREAS, the boundaries of the Redevelopment District and Project Area are set forth by a map in **Exhibit A**, narrative description of the district in **Exhibit B** and a narrative description of the project area in **Exhibit C** attached hereto; and

WHEREAS, a requested second amendment to the Project Plan has been submitted to the City by College Hill Urban Village, LLC and CHUV, Inc. to modify the construction components and to re-allocate \$150,000 of eligible expenditures from property acquisition to infrastructure improvements; and

WHEREAS, any substantial change, as defined in the Act, to the Project Plan is subject to a public hearing following publication of notice thereof at least twice in the official City newspaper;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

1. The City of Wichita is considering a second amendment to the College Hill Urban Village Project Plan for the Douglas and Hillside Redevelopment District, to modify the construction components and re-allocate \$150,000 from property acquisition to infrastructure improvements.

2. The City of Wichita will hold a public hearing to consider the second amendment of the Project Plan on the 7th day of July, 2009, at 9:00 a.m., or as soon thereafter as possible, in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas.

3. The governing body will consider making findings and taking action necessary for the second amendment of the Project Plan at the public hearing set to be heard herein.

4. A copy of the proposed amendment is available for inspection during the regular office hours in the office of the City Clerk, City Hall, 13<sup>th</sup> Floor, 455 N. Main, Wichita, Kansas.

5. This Resolution shall be published twice in the official City newspaper.

ADOPTED this 23 day of June , 2009.

ATTEST:

---

Karen Sublett, City Clerk

---

Carl Brewer, Mayor

APPROVED AS TO FORM:

---

Gary Rebenstorf, City Attorney

City of Wichita  
City Council Meeting  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** Southeast Water Transmission Main (Districts I, II, and IV)

**INITIATED BY:** Water Utilities

**AGENDA:** Consent

---

**Recommendation:** Amend the CIP and approve the 2009 expenditure for the Southeast Transmission Main from Exposition and Maple to the Southeast Booster Pump Station.

**Background:** On April 8, 2003, the City Council approved a Water Master Plan Update. The firm of Burns & McDonnell was selected for professional services. In the 2004 Water Master Plan, potential water pressure problems were identified. A new transmission main from Exposition and Maple to Gouverneur and Osie was identified as being necessary to solve the water pressure situation. This included a booster pump station at Gouverneur and Osie which was also deemed necessary.

**Analysis:** The booster pump station was completed in 2006 and is fully operational. Phases 1-A, 1-B and 1-C, of the Southeast Transmission Main are complete. Phase 2-A and part of 1-D are being constructed during 2009. Design of Phase 3 and construction of 2-B and 1-D are scheduled for construction during 2009, as well.

**Financial Considerations:** Funding is included in the Proposed 2009-2018 Capital Improvement Program (CIP) for Maple and Exposition to Southeast Booster Pump Station, CIP W-1194. The revised total budget for the project is \$27,800,000. In April 2005, the City Council approved an initial project budget, which totaled \$12.8 million in phases that reflect \$2.0 million appropriated in 2005, \$6.4 million in 2006, and \$4.4 million in 2007. The amount necessary to complete the next phase of the project is \$15 million.

**Goal Impact:** This project addresses ensuring efficient infrastructure by accommodating growth in southeast Wichita and the future growth areas of southeast Sedgwick County, ensuring reliable water service to the Water Utility customers.

**Legal Considerations:** The Law Department has approved the Resolution as to form.

**Recommendations/Actions:** It is recommended that the City Council: 1) amend the CIP; 2) approve the 2009 expenditure; 3) adopt the Resolution; and 4) authorize the necessary signatures.

**Attachments:** Resolution

## RESOLUTION NO. 09-186

A RESOLUTION AMENDING RESOLUTION NO. **5-203** PERTAINING TO THE **SOUTHEAST WATER TRANSMISSION MAIN (W-1194)** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That Section 1 of Resolution No. **5-203** is hereby amended to read as follows:

**“SECTION 1.** It is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas **Water and Sewer Utility** such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, **Southeast Water Transmission Main (W-1194)** (called the “Project”). The total costs of the Project are estimated to be **\$27,800,000** exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.”

SECTION 2. That Section 3 of Resolution No. **5-203** is hereby amended to read as follows:

**“SECTION 3.** It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed **twenty-seven million eight hundred thousand dollars (\$27,800,000) in 2009** exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.”

SECTION 3. That the original of Sections 1 and 3 of Resolution **5-203** is hereby rescinded.

Adopted at Wichita, Kansas June 23, 2009.

(Seal)

\_\_\_\_\_  
CARL BREWER, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
GARY E. REBENSTORF, Director of Law

Published in the Wichita Eagle on June 36, 2009

**NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED \$27,800,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.**

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 09-186, duly adopted June 23, 2009, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Southeast Water Transmission Main (W-1194) (called the "Project"). The total costs of the Project are estimated to be twenty-seven million eight hundred thousand dollars (\$27,800,000) in 2009, exclusive of the cost of interest on borrowed money. The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed \$27,800,000 in 2009, exclusive of the cost of interest on borrowed money, under the authority of K.S.A. 10-1201 et seq., as amended and supplemented. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within Fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on June 29, 2009.

/s/ CARL BREWER, Mayor

ATTEST:

/s/ KAREN SUBLETT, City Clerk

**City of Wichita**  
**City Council Meeting**  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** Aquifer Storage and Recovery – Well Field Maintenance Facility and Supervisor’s Residence

**INITIATED BY:** Water Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the Agreement for Professional Design Services with McCluggage Van Sickle & Perry for design and basic bidding services for the well field maintenance facility and the supervisor’s residence for the Aquifer Storage and Recovery Project.

**Background:** On July 10, 2007, the City Council approved and instructed Staff to proceed with the projects necessary for Phase II of the Equus Beds Aquifer Storage and Recovery (ASR) Project. The current maintenance facility is located nine (9) miles north of the future ASR Water Treatment Plant and is sized for the present thirteen staff members, and the maintenance activities associated with fifty-five municipal water supply wells and a 10 million gallon-a-day ASR system. The supervisor’s residence is part of the maintenance facility site providing added security in a remote area, as well as immediate response to operational issues that occur after hours.

**Analysis:** With the addition of the Bentley Well Field and Phase II ASR facilities, the staffing and maintenance requirements are increasing beyond the existing maintenance facility’s footprint. The facility is presently located on 5 acres of easement associated with Well No. 14. It consists of the office, electronics shop, maintenance garage, large vehicle storage, supervisor’s residence, lagoon, high line training area, power pole and pipe storage. There is no space available to expand.

The City purchased 120 acres for Phase II Water Treatment Plant and substation. The south 80 acres is large enough for the Phase II facilities and a new maintenance facility. The new facility will be capable of accommodating a growing staff, fleet and maintenance responsibilities throughout future phases as the well field more than doubles in infrastructure.

The Purchasing Manager issued a Request for Qualifications for architectural design and basic bidding services for the well field maintenance facility and supervisor’s residence for the Equus Beds Well Field section of the Production & Pumping Division of Water Utilities. Five firms submitted proposals: Howard + Helmer Architecture, McCluggage Van Sickle & Perry, LawKingdon Architecture, El Dorado Inc. and Schaefer Johnson Cox Frey Architecture. All were interviewed by the Staff Screening and Selection Committee. McCluggage Van Sickle & Perry was selected based on their superior experience in designing similar facilities, their proposed project team, performance record with other City projects and their local presence.

**Financial Considerations:** The estimated cost for design and bidding services is \$255,553. Funding for this project is included in Water Utilities CIP Project W-549, Water Supply Plan, which is for future water supply development.

**Goal Impact:** The project will help ensure efficient infrastructure by ensuring that Water Utilities has sufficient facilities to support and maintain its infrastructure in the Equus Beds Well Field.

**Legal Considerations:** The Agreement has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the Agreement for Professional Design Services and authorize the necessary signatures.

**Attachments:** Agreement for Professional Design Services with McCluggage Vansickle & Perry



***AGREEMENT  
for  
PROFESSIONAL DESIGN SERVICES***

**DESIGN SERVICES AGREEMENT  
CITY OF WICHITA  
ASR PROGRAM – PHASE II PROJECTS**

\_\_\_\_\_, 2009

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## **AGREEMENT**

THIS AGREEMENT, with an effective date of the \_\_\_\_ day of \_\_\_\_\_, 2009, is made and entered into between the CITY OF WICHITA, KANSAS, a municipal corporation, acting by and through the Wichita Water Utilities (hereinafter called the "City"), and McCluggage Van Sickel & Perry, a corporation with a principal place of business at 125 S. Washington, Wichita, KS 67202, (hereinafter called the "Designer"). (City and Designer may be collectively referred to herein as "Parties", or individually as "Party".)

### **Recitals**

**WHEREAS**, the City has developed an Integrated Local Water Supply (ILWS) Plan to meet the City's water supply requirements through the year 2050. This Plan consists of a portfolio of projects and components to be constructed in phases over a 10-year period that must be coordinated in order to meet the Plan's water supply goals.

**WHEREAS**, the City desires to obtain professional design and architectural services to perform a design for ASR Well Field Maintenance Facility and Supervisor's Residence.

**WHEREAS**, this Agreement concerns the Well Field Maintenance Facility and Supervisor's Residence (hereinafter referred to as the "Project") and the coordination of the Project with other Phase II Projects;

**WHEREAS**, Designer represents that its members include duly-licensed architect(s) and engineer(s) of the State of Kansas and that it has the present capacity, is experienced and qualified to perform professional services for the City in connection with planning, designing, preparing construction documents and bidding, of the Project as specified in this Agreement;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants and obligations set forth herein, the parties mutually agree as follows:

### **Section I - Preliminary Matters**

- A. Designer's professional design services shall consist of design work for the Project as specified in **Attachment 1**, attached hereto and incorporated into this Agreement, the proposal, except for the proposed schedule, as it applies to this Project, provided by Designer as part of its bid and any other services included in this Agreement, including normal architectural, engineering and professional design services, unless superseded by Supplemental Agreement pursuant to **Section XIX.I** of this Agreement. Other exhibits or attachments may be attached

to and made a part of this Agreement, some of which may be in conflict with other attachments, exhibits or portions of this Agreement. In the event of any conflict in any of these attachments, exhibits or portions of this Agreement, the intent of the parties is to resolve such conflict in favor of the provision which provides for the greatest scope of services to the City. The greater service shall be included in the professional services provided, without additional compensation.

- B. If the Parties to this Agreement have previously entered into a Professional Services Agreement for design services for any work related to the Program, then notwithstanding any provisions in that agreement to the contrary, all work performed by Designer for the Project under this Agreement shall be performed in accordance with the standards, terms, conditions and requirements of this Agreement.
- C. In performing professional services pursuant to this Agreement, Designer acknowledges that time is of the essence for Program delivery. All services to be performed under this Agreement shall be commenced immediately upon the Notice to Proceed, in accordance with the Milestone Schedule set forth in **Attachment 2**, attached hereto and incorporated into this Agreement.
- D. The total compensation to be paid Designer under this Agreement is stated in **Section VI** of this Agreement, which amount is intended to cover the entire cost of the professional design services contemplated by this Agreement. The City and Designer agree to fully cooperate with each other to keep the scope of work and the cost of professional services within those contemplated by this Agreement. The City shall pay Designer in accordance with the terms of this Agreement as reflected in the Fee Schedule set forth in **Attachment 3**, attached hereto and incorporated into this Agreement.

## **Section II - Authority**

- A. R.W. Beck, Inc. ("Project Manager") is the City's Project Manager for the ASR Program – Phase II Projects. The Project Manager is responsible for authorizing and approving all work performed under this Agreement. All work to be performed by Designer shall be authorized in writing by the Project Manager as provided by this Agreement. All communications related to the Project shall be with the Project Manager and, in his absence, a person to be designated by him.
- B. Jeffery W. Weiford, AIA, Vice President of McCluggage Van Sickel & Perry ("Designer Representative") is Designer's representative for the ASR Program – Phase II Projects, including this Project. Designer Representative shall have sufficient authority to represent and bind Designer in those instances when such authority is necessary to carry out Designer's responsibilities and obligations under the terms of this Agreement.

### Section III - Basic Services and Responsibilities

- A. Designer agrees to perform all of the professional services set forth below and described in **Attachment 1** and/or the proposal provided by Designer as part of its bid which includes, but is not be limited to all normal architectural, structural, mechanical, civil, electrical, landscape, code and life safety, and interior design, appropriate to the Project.
- B. Designer hereby represents to the City that Designer is financially solvent and possesses sufficient experience, licenses (including required state licenses), authority, personnel and working capital to complete the services required hereunder.
- C. Designer hereby represents to the City that Designer has visited the sites for the Project and has familiarized itself with the conditions under which the required services are to be provided; that it has properly investigated and considered all conditions and obstacles in every proposal submitted which may affect its services; and that Designer will correlate its observations of the site conditions and all of the provisions of this Agreement and of any related construction documents for which Designer has responsibility. Accordingly, the parties agree that Designer will not be granted any additional compensation based upon the lack information or its effects on the cost of work.
- D. The accuracy of soils, foundation, groundwater, and other subsurface investigations are not guaranteed by the City and Designer is responsible for verifying same. Designer shall make all necessary investigations in order to inform itself thoroughly as to the character and magnitude of all work involved in the performance of services hereunder. No plea of ignorance of conditions that exist or that may hereafter exist, or any of the difficulties that will be encountered in the performance of services hereunder, as a result of failure to make necessary examinations and investigations, will be accepted as sufficient excuse for failure or omission on the part of Designer to fulfill in every detail all the requirements of the Agreement, or will be accepted as a basis for any claim whatsoever for extra compensation or an extension of time.
- E. The plans and specifications and professional services provided under this Agreement for this Project shall be prepared in a manner consistent with the same degree of care and skill ordinarily exercised by design professionals for projects of similar size, complexity, and difficulty, and shall be adequate and sufficient for the proper construction and operation of the Project. The drawings and specifications for the Project, when submitted by Designer to the City, must represent a thorough study and competent solution for the Project and shall reflect appropriate and necessary architectural and engineering services applicable to the Project. Designer shall be responsible for ensuring the

professional quality, technical accuracy, timely completion and the coordination of all designs, plans, reports, specifications, drawings, schedules, cost estimates and other services rendered by Designer. Accordingly, the City shall require reimbursement from the Designer for the value of change orders on construction contracts which use Designer's plans, specifications and other work due to design errors, plus fifteen percent (15%) of the value of change orders due to design omissions, when the sum of these two figures exceeds two percent (2%) of the original construction contract price. The following formula will apply: (cost of design error change orders) plus (cost of design omission change orders times 0.15) minus (original contract amount X 0.02) equals (required reimbursement by Designer). This formula covers all necessary change orders during construction, and additionally applies to any necessary modifications that are discovered up to one year after the date of the notice of completion, or up to one year after the date of beneficial occupancy, whichever is earlier. The City's right to require reimbursement is cumulative and does not foreclose or otherwise prevent the City from recovering direct, incidental or consequential damages caused by Designer's failure to perform as stated in this paragraph. The City reserves to itself the right, in its discretion, to make final determinations concerning the responsibility for design errors and omissions.

- F. Designer represents to the City that its and all of its subconsultant's services shall be performed in a skillful and competent manner, exercising due and reasonable professional care, and shall comply with the recognized industry standards and the standards and practices in this Agreement. The designer shall be responsible to the City for all costs and damages resulting from (i) defects in design, (ii) non-workability of design details, (iii) failure to comply with the terms of this Agreement, and (iv) negligent acts, errors or omissions. Designer and its consultants, agents, employees and officers shall promptly upon notice or discovery, during any phase of the Project, make necessary revisions or corrections of errors, ambiguities, or omissions in the drawings and specifications without additional compensation.
- G. The City shall have the right to disapprove any portion of Designer's work on the Project, including, but not limited to, work associated with the design and construction documents, pre-bid and bidding phases, and any other design work or documents, which does not comply with the requirements of this Agreement. In the event that Designer's work or a portion thereof is not approved by the City, Designer shall proceed, when requested by the City, with revisions to the design work or documents prepared for that work and meet all applicable requirements of this Agreement. If said additional work complies with the requirements of this Agreement, the City will provide prompt written approval. Correction or completion of work which does not comply with the requirements of this Agreement shall be made without adjustments to the compensation for Designer's services provided for hereunder unless the revisions are made to work previously approved for previous tasks, in which case, Designer's

compensation shall be adjusted. It is the intent of the parties that Designer shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, services or other work, without additional cost to the City. The acceptance of Designer's services by the City shall not relieve Designer from the obligation to correct subsequently discovered defects, inaccuracies or incompleteness resulting from Designer's negligent acts, errors or omissions.

- H. Designer shall obtain written authorization from the City before proceeding with each major phase for the Project. Delays in receiving City approval shall be cause for an adjustment to the schedule set forth in **Attachment 2**.
- I. Designer and City agree to communicate as necessary on all matters connected with carrying out and performing the services required under this Agreement.
- J. Designer agrees to design the Project within the general intent of the program and established Project budget. Should the Designer determine that the Project cannot be constructed within the established Project budget, Designer shall immediately notify the City, in writing, so that the Project scope and/or Project budget can be reviewed and modified as necessary, including any changes in Designer's scope, compensation and schedule.
- K. Designer agrees to conform to and be bound by written standards, criteria, budgetary considerations and policies previously furnished by the City (Memo, RFP and Addenda).
- L. All drawings and specifications shall be prepared so that the Project, when constructed in accordance with such drawings and specifications, complies with all applicable laws, statutes, codes, ordinances, executive orders, and rules and regulations of the City, County, the State of Kansas, and the United States Government in effect when the construction documents are finally accepted by the City and which pertain to the providing of services under this contract. "Code Requirements"; subject only to (i) all approved variances therefrom, and (ii) written agency interpretations thereof when based upon inquiry by Designer to the agencies charged with the enforcement of such laws, statutes, codes, ordinances, rules and regulations.
- M. Designer shall prepare the Project plans and specifications in a format that complies with all City requirements as well as all applicable county, state and federal requirements for the Project. Designer shall be responsible for contacting the appropriate agencies and to determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though federal, state and county agencies may have approved such documents.

- N. Designer shall be responsible for coordinating its design work with those other designers working on the other projects which are part of the ASR Program – Phase II Projects to ensure that all physical and electrical interfaces, including but not limited to, civil, architectural, structural, mechanical, electrical, and instrumentation and controls, are compatible with the Project's operations.
- O. Coordination with the City, other regulatory agencies, or designers of other ASR Program – Phase II Projects shall be a continuing work item, continuing through the completion of Designer's work for this Project as described in **Attachment 1** to the completion of the Project. Such coordination shall consist of regular progress and review meetings with the Contractor, City, designers of other ASR Program – Phase II Projects, work sessions with the City's staff and the user agencies or as otherwise directed, and coordination with utility companies. Such coordination shall also include field and office reviews of plans and documents during the development of the design for the Project, as required in this Agreement. Designer shall document all such meetings and work sessions during the Project and distribute notes of such meetings and work sessions to the City and others, as appropriate.
- P. Designer shall, upon the request of the City, be represented at all Design/Programming meetings or hearings which involve or impact the design of the Project.
- Q. Designer shall complete a Preliminary Design Report and, following its completion, Designer shall assist the City in determining the best course of action to take to complete implementation of selected subparts of the Project. The course of action may include a design-bid-build or alternate delivery approach for some or all of the subparts. City reserves the right to structure the implementation of the Project in any such manner at its sole discretion.
- R. The responsibilities and obligations of Designer under this Agreement are not be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, City's Representative or employee of the City.
- S. Designer shall submit billings to the City for the services performed as required by this Agreement. During the progress of work covered by the Agreement, partial payments may be made to the Designer at intervals of four weeks or greater time span.
- T. Designer shall complete and deliver preliminary and final planning documents to the City within the time allotted for the work as stipulated in **Attachment 2** or as it is amended.
- U. Designer represents that the statements of fact made in the proposal it submitted with its bid to perform services for the Project are true and accurate except for



the proposed schedule, and that the City reasonably relied upon such representations.

#### **Section IV – Subconsultants**

- A. These services shall be performed by Designer's regular professional and technical staff. In the event Designer does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with the City approval, by practicing professional subconsultants outside of Designer's regular employment.
- B. Prior to designating an outside professional to perform work or services under this Agreement, Designer shall submit the name(s) of such professional, together with a resume of training and experience in work of like character and magnitude as the project being contemplated, to the City and receive prior written approval. The City shall have the right to reject any proposed subconsultant for reasonable cause. "Subconsultant" shall mean any person or business entity which is not an employee of Designer.
- C. A subconsultant's services, performed under this Agreement, are considered the services of the Designer. Delegation of services shall not be construed to create any contractual relationship between the City and such subcontractor. All design documents, contract documents, and other documents prepared and issued by subconsultant(s) are documents of the Designer for the purposes of this Agreement. Designer's delegation to subconsultant(s) of some of Designer's services does not relieve Designer of any liability for full, workmanlike and proper performance of the delegated service and for any liability for representations, warranties or promises made in connection with or arising from performance of the services. All representations, warranties and promises made in this Agreement extend to and apply to subconsultant's services.
- D. The City's communications with Designer's subconsultants shall be through Designer.

#### **Section V - Schedule**

- A. Designer shall submit to the City, in writing, a Milestone Schedule setting out the milestone dates on which the Designer plans to complete its work under this Agreement within twenty (20) working days of the Notice to Proceed. The City shall have ten (10) working days to review the proposed milestone schedule, or as mutually agreed by the parties. The milestone schedule shall include, but not be limited to, all dates by which any known actions, decisions or information required from the City must be provided in order for Designer to perform according to the schedule. The milestone schedule shall, when reviewed by the City, be incorporated herein by reference as **Attachment 2** or as it is amended.

Designer shall provide monthly schedule updates to the City in a mutually agreeable electronic format.

- B. Designer shall make every reasonable effort to meet the Milestone Schedule. Meeting the deadlines contained in this Schedule shall not result in a higher design cost to the City nor shall quality of design be compromised to achieve these dates.
- C. The parties agree that in performing the terms, conditions and requirements of this Agreement by Designer, time is of the essence. Designer shall perform diligently and uninterruptedly and shall complete its work within the time schedule set forth herein.

## **Section VI - Compensation**

- A. Payment to the Designer for the performance of its services shall be as defined in **Attachment 3** and shall not exceed the sum of \$255,553.00, which payment shall be in accordance with **Attachment 3**. It is understood and agreed by and between the Parties hereto, that the City shall pay Designer for services furnished, and Designer shall accept as full payment for such services, amounts of money computed in this Section.
- B. It is the Parties' intent that all design services required for the construction of the Project are to be provided by Designer as part of its services as identified in **Section III** of this Agreement. The City's failure to list a specific service that would normally be provided shall not be cause to eliminate that service.
- C. In the event that either party desires to change the scope of the services for any reason which is not within the scope of the services as identified in **Section III** of this Agreement, such party shall submit to the other party a request for a Supplemental Agreement. Designer will then submit a projection of the cost of the requested Supplement Agreement. Designer's compensation under any Supplemental Agreement shall be at the hourly rates as defined in **Attachment 3**. Any Supplemental Agreement shall be in writing and signed by representative of both parties. Neither party shall unreasonably disapprove a request for Supplemental Agreement. However, no additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement.
- D. Design changes required by (i) changes in applicable laws, statutes, codes, ordinances or rules and regulations of the City, Local, State, or Federal governmental agencies after the City's acceptance of construction documents or (ii) unreasonable extension, by no fault of Designer, of the Milestone Schedule beyond the dates in *Attachment 2*, as amended from time to time, of shall be compensated for pursuant to **Section VI.C.** of this Agreement.

- E. Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any work beyond what has been specifically authorized in writing by the City.
- F. In the event that any part of the Project work is deleted or otherwise not designed or performed, compensation to Designer for the Project shall be payable only to the extent services are actually performed on said work, or portions of the Project work, in accordance with Designer's approved payment schedule.
- G. Designer shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and, provided that Designer is timely paid amounts due from the City under this Agreement, shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities, funds or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations. If the City, in its sole discretion, reasonably requires lien and/or verified claim releases in a form satisfactory to City and executed by Designer and its subconsultants, they shall be submitted with Designer's monthly invoices to the City.
- H. Designer shall maintain current, accurate and complete records of all man hours expended and expenditures made by it in connection with the Project. In accordance with **Section VII** of this Agreement, all such records shall be available for review by the City at all reasonable times upon written request by the City to Designer.
- I. The final payment to Designer shall not be made until after the Project is accepted by the City and this Agreement is otherwise fully performed by Designer.
- J. The City shall not be obligated to make any payment (whether an interim payment or Final Payment) to Designer hereunder if any one or more of the following conditions exist:
  - (i) Designer is in default of any of its obligations hereunder or under any provision of this Agreement.
  - (ii) Designer has failed to make payments promptly to subconsultants or other third parties in accordance with the terms of its respective subconsultant agreements after the City has made payments to Designer.
- K. No interim payment or other partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the services to which such interim payment or other partial payment relates, nor shall it relieve Designer of any of its obligations hereunder with respect thereto.

## **Section VII - Examination of Records**

- A. Designer agrees to make available during regular business hours all of its and its subconsultant's calculations, sketches and drawings concerning the Project such as the City may wish to examine during performance of the Agreement.
- B. Designer agrees to maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by Designer and, where relevant to method of payment, to make such material available at its office at reasonable times during the contract period, and for three (3) years from the date of final payment under the contract for inspection by the City or its authorized representatives.
- C. Designer agrees to include in first-tier subcontracts under this Agreement a clause to the effect that the City, acting through its duly authorized designee, shall, until 3 years after final payment under the subcontract, have access to and the right to examine and any of the subcontractor's directly pertinent documents, including but not limited to, books, invoices, timesheets, papers, or other records involving transactions related to the subcontract.
- D. The periods of access and examination as noted above for records relating to (i) litigation or settlement of claims arising from the performance of this Agreement, or (ii) costs and expenses of this Agreement to which the City, acting through its duly authorized designee, has taken exception, shall continue until such appeals, litigation, claims, or exceptions are finally resolved.

## **Section VIII – Assignments/Parties to Agreement**

- A. The list of Project team members and key personnel, essential to the successful completion of the Project and authorized to perform work under this Agreement are in **Attachment 4**. The list may only be amended during performance of this Agreement under the following procedure:
  - (i) If Designer is required to replace any of its key personnel, Designer shall notify the City in writing of the desired change. No such changes shall be made until at least two (2) qualified replacement candidates are recommended by Designer and a replacement is approved in writing by the City. The City's approval shall not be unreasonably withheld. Failure of Designer to comply with the requirements of this provision may be the basis for the City's termination of this Agreement.
  - (ii) The City shall respond to Designer's written notice regarding replacement of key personnel within fifteen (15) working days after the City receives the list of proposed changes. If the City or its designated representative does

not respond within that time, the listed changes shall be deemed to be approved.

- (iii) If during the term of this Agreement, the City determines that the performance of approved key personnel is not acceptable, it shall notify Designer and give Designer the time which the City considers reasonable to correct such performance. Thereafter, the City may require Designer to reassign or replace such key personnel. If the City notifies Designer that certain of its key personnel or the key personnel of a subconsultant should be replaced, Designer will use its best efforts to replace such key personnel within a reasonable time but not to exceed thirty (30) calendar days from the date of the City's notice.
- B. Notwithstanding any other provision in this Agreement, it is the intent of the parties that all key personnel be engaged to perform their specialty for all such services required by this Agreement, and that Designer's key personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- C. Neither Designer, nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on the Project, and Designer shall make written inquiry of all of its subconsultants concerning the existence of or potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.
- D. The City is not obligated or liable under this Agreement to any party other than the Designer named herein. Designer understands and agrees that this is a personal services agreement and it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting.
- E. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

## **Section IX - Ownership of Documents**

- A. All Project deliverables, as described in **Attachment 1**, prepared by Designer under this Agreement when delivered to and accepted by the City, shall become the property of the City when Designer has been compensated by the City under

the terms of this Agreement. Designer agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder as more fully described in **Attachment 1**.

- B. The City shall have unlimited rights in the ownership of all Project deliverables, as described in **Attachment 1**, including the right to use the same on any other City project(s) without additional cost to the City, and with respect thereto the Designer agrees to and does hereby grant to the City a non-exclusive royalty-free license to all data which Designer may cover by copyright and to the Project deliverables to which Designer may assert any rights or establish any claim under the patent or copyright laws or any other applicable laws subject to the other provisions of this section.
- C. Designer shall have common law, statutory and other reserved rights in the drawings, specifications and other documents, including those in electronic form, prepared by Designer for use with respect to this Project. However, Designer gives the City an irrevocable license to use the drawings, specifications, and other documents prepared by Designer for completion of this Project subject to the other provisions of this section. This license is for the benefit of the City and its assigns and permits the City to retain other architects, engineers and design professionals who may use the drawings, specifications and other documents for such purposes.

All drawings, specifications and other documents shall become the property of the City, at the conclusion of the Project, whether the Project for which they are made is executed or not, or the termination of the services of Designer, whichever is earlier, and shall be delivered to the City clearly marked and identified in good order. Such documents may be used by the City to construct one or more like projects without the approval of, or additional compensation to, Designer. Designer shall not be liable for injury or damage resulting from reuse of drawings, specifications and other documents for a project in which Designer is not also involved, the City will remove and obliterate from such documents all identification of the original Designer, including name, address, professional seal and stamp, and the City will indemnify and hold harmless the designer for any injury, or cost, or damages resulting from such reuse.

- D. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of Designer's or the City's rights.

## **Section X - Taxes and Licenses**

- A. Designer shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work and services which it performs under this Agreement and shall take out and keep current all required municipal, City, state or federal licenses required to perform its services under this Agreement. Designer shall furnish the Project Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes.

## **Section XI - The City's Responsibilities**

- A. The City shall:
- (i) Use reasonable efforts to furnish all available information and data pertaining to the Project now in the City's possession, including providing a topographic survey, ~~and geotechnical report.~~
  - (ii) Pay the Designer for its services in accordance with the requirements of this agreement.
  - (iii) Provide right of entry for Designer's personnel in performing the services hereunder.
- B. Actions taken by the City under this Section shall not, in any way, relieve Designer of its responsibilities for design deficiencies, errors or omissions.
- C. The City shall not be liable for the payment of taxes, late charges, or penalties of any nature incurred by Designer in performing its services under this Agreement.
- D. The City makes no representations or warranties, express or implied, concerning the accuracy of information and data it provides pertaining to the Project.

## **Section XII - Laws and Ordinances**

- A. Designer, at all times, agrees and shall observe and comply with all federal, state and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1974, and to comply with the City's Non-Discrimination and Equal Employment/Affirmative Action Program as set forth in **Attachment 5** which is attached hereto and adopted by reference as though fully set forth herein.

### **Section XIII - Status of Designer**

- A. It is understood and agreed that the status of Designer shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as it is not intended, nor shall it be construed, that Designer, or any member of its staff or any consultant or subconsultant, is an employee, officer or agent of the City for any purpose whatsoever.

### **Section XIV - Termination of Agreement**

- A. The City may terminate this Agreement in whole or in part, at any time, upon written notice, with or without cause, at its sole discretion; provided, however, that in any case the Designer shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions in **Section II** of this Agreement and **Attachment 3**, but in no case shall payment be more than the Designer's actual costs plus a reasonable sum for profit.
- B. After receipt of written notification that this Agreement has been terminated under this Section, Designer shall incur no further costs other than reasonable termination costs associated with current activities.
- C. In the event of termination, all finished and unfinished Project deliverables prepared by Designer pursuant to this Agreement shall become the sole property of the City, subject to the provisions of Section IX of this Agreement.
- D. Termination shall not relieve Designer from liability to the City for damages sustained as the result of Designer's breach of this Agreement; and the City may withhold funds otherwise due under this Agreement until such time as the exact amount of damages, if any, has been determined.

### **Section XV - Insurance Requirements**

- A. During the Program, Designer agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Designer. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Designer shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.
- B. Designer shall procure and maintain as the insurance coverage:
  - (i) Professional Liability Insurance to insure the adequate performance of all professional activities under this Agreement in an amount of \$1,000,000 per



claim and annual aggregate for ASR Well Field Maintenance Facility and Supervisors Residence.

(ii) Workman's Compensation and Employer's Liability Insurance in an amount of: Workman's Compensation – Statutory, and Employer's Liability - \$100,000.00 each occurrence.

This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law.

(iii) Comprehensive (also commonly referred to as "Commercial") General Liability Insurance in an amount of \$500,000.00 per occurrence for bodily injury, death and property damage.

This policy shall be procured and maintained by the Designer that shall be written in a comprehensive form and shall protect Designer against all claims arising from injuries to persons (other than Designer's employees) or damage to property of the City or others arising out of any negligent act or omission of Designer, its agents, officers, employees, subconsultants or subcontractors in the performance of Designer's services under this agreement. It shall include Premises—Operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability coverages.

- C. Every such policy shall be procured and maintained with appropriate forms and insurers acceptable to the City. All coverage shall be maintained for a period of five years following Substantial Completion of the Project so long as said insurance is reasonably available. Designer shall be solely responsible for any deductible losses under any required policy, pursuant to **Section XVI, Indemnification** of this Agreement. The City shall be added as an additional named insured on every such policy with the exception of Workers Compensation and professional liability insurance. All coverage shall be continuously maintained for a period of five years following Substantial Completion to cover all liability, claims, demands, and other obligations assumed by Designer pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Designer shall be solely responsible for any deductible losses under any required policy.
- D. Every policy, except professional liability insurance, and workers compensation required above shall be primary insurance, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory

insurance to that provided by Designer. No additional insured endorsement to the policy required by this paragraph shall contain any exclusion for bodily injury or property damage arising from completed operations.

- E. Satisfactory Certificates of Insurance shall be filed with the City prior to the time Designer starts any work under this agreement. Designer shall furnish the City certificates of insurance in a form acceptable to the City evidencing that the insurance coverage required to be maintained by Designer hereunder are in full force and effect. In addition, insurance policies applicable hereto shall contain a provision that provides that the City shall be given thirty (30) days written notice by the insurance company before such policy is cancelled.
- F. Failure on the part of Designer to procure or maintain policies providing the required coverages, conditions and limits shall constitute a material breach of the Agreement. In such event, as its sole discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Designer to the City upon demand, or the City may offset the cost of the premiums against any monies due to Designer from the City.
- G. Designer shall procure and maintain or shall cause any subconsultant of Designer, concerning the services delegated under this Agreement to such subconsultant, to procure and maintain Professional Liability Insurance to insure its professional activities in an amount not less than \$1,000,000 per claim and the insurance coverages required in **Section XV.B(i)(ii) and C** of this Agreement.
- H. To the extent damages are covered by property insurance during construction, the City and Designer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The City and Designer shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties identified herein. Designer shall require that all insurance policies, except for professional liability insurance, that are in any way related to the Project, including those that are secured and maintained by subconsultants, include clauses providing that each underwriter shall waive all of its rights of recovery under subrogation or otherwise, against the City and the City's representatives.

#### **Section XVI - Indemnification**

- A. Designer hereby agrees to indemnify and hold harmless the City, its officials, officers, and employees from damages, costs, liabilities (including reasonable attorney fees) to the extent caused by the Designer for its negligent acts or errors or omissions, its agents, servants, employees or subconsultants occurring in the

performance of its services under the Agreement. The insurance coverage specified in this Agreement constitutes the minimum requirements and these requirements do not lessen or limit the liability of Designer hereunder.

- B. Designer agrees that it will contractually obligate its subconsultants to indemnify and hold harmless the indemnitees identified in this Section to the same extent that Designer is required to indemnify and hold harmless said indemnitees.
- C. In the event of the filing of record of a lien or verified claim against any property on which the Project is located by Designer, by a subconsultant, or by any other person or entity for which Designer may be responsible, Designer shall promptly remove the lien or claim in accordance with the laws of the State of Kansas.
- D. Designer shall indemnify and hold harmless the City from and against liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) in the event that litigation is filed by one of Designer's subconsultants for non-payment by Designer to that subconsultant.
- E. Designer shall take reasonable actions to inform the City of known potential patents on processes, designs, or devices that may be incorporated into the Project. Designer agrees to save harmless the City against any claim or demand for payment for the use of any patented or copyrighted material, process, design, article or device that may enter into the work being performed by Designer under this Agreement to the extent that the City shall have provided Designer reasonable notice of such claim or demand for payment.
- F. The City does not agree to indemnify, hold harmless, exonerate or assume the defense of Designer or any other person, or entity whatsoever, for any purpose whatsoever by or in connection with this Agreement, except as provided in Section IX, Paragraph C.

## **Section XVII – Consequential Damages**

- A. In no event shall either Party be liable in tort or in contract for any incidental, special, indirect or consequential damages of any kind, including, without limitation, claims for lost profits or loss of goodwill, even if that Party has been advised of the possibility of such damages, by reason of any breach or default under this Agreement. This section shall not be interpreted to affect in any way Designer's obligations with respect to a third party.

## **Section XVIII- Force Majeure**

- A. Neither Party shall be responsible nor deemed to be in default, on account of damages or delays in performance of the Agreement due to a cause beyond its control and not occasioned by its fault or negligence. Such causes include but

are not limited to: Acts of God, labor disputes, strikes or lockouts, acts of war or terrorism; provided, however, that the existence of such causes shall not excuse the delaying or nonperforming Party from the resulting delay unless such Party shall have given the other Party written notice on any excusable delays referenced to above, within ten (10) days (or such additional time as may be approved by the other Party) after the delaying or nonperforming Party has actual knowledge that such occurrences will result in damages or delays.

## **Section XIX - Miscellaneous**

- A. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law. The City's rights and remedies are separate and cumulative. No consent by the City, expressed or implied, to any breach of the Agreement or waiver or failure to exercise in any respect any right or remedy provided under this Agreement by the City waives or bars any future right or remedy hereunder or available at common law.
- B. Neither the City's review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the Designer under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- C. The laws of the state of Kansas will govern the construction and operation of and the remedies available under this Agreement. Venue for any lawsuit arising under or related to this Agreement shall be before the Eighteenth Judicial District Court of Kansas (Sedgwick County, Kansas) or the United States District Court for the District of Kansas sitting in Wichita, Kansas.
- D. In the event any dispute arises under this Agreement and during the time such dispute is being resolved, Designer hereby agrees that it shall continue performance under this Agreement in accordance with the terms and conditions hereof since time is of the essence and City shall continue to compensate Designer for all undisputed payment amounts. Designer's failure to continue expeditious performance due to a dispute arising under this Agreement, at the option of the City, shall be construed as a material breach of this Agreement.
- E. Designer and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void. Designer and the City agree to use a good faith attempt to resolve any claim or dispute with mediation.
- F. The term of this Agreement shall commence upon written Notice to Proceed from the City to Designer and end upon final completion of the services to be provided hereunder by Designer. The insurance and indemnification provisions of this Agreement shall survive such termination.

- G. The captions and headings set forth in this Agreement are for convenience and for reference only and shall not be construed so as to define or limit the terms and provisions hereof.
- H. This Agreement is intended as the complete integration of all prior oral or written understandings between the Parties. No prior or contemporaneous additions, deletions or other amendments shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement.
- I. Supplemental Agreements and other amendments to the Agreement shall require approval by the City in the manner required by City policy, provided that City Staff or the Project Manager (as otherwise provided in writing by the City) may negotiate and approve modifications to **Attachments 2 and 4**, on behalf of the City, as may be required from time to time.
- J. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.
- K. All notices, demands, or other documents or instruments required or permitted to be served upon either Party hereto shall be in writing and shall be deemed duly served when delivered in person to an officer or partner of the Party being served, by facsimile transmission or when mailed certified or registered mail, return receipt requested, postage prepaid addressed to parties at the addresses stated below:

City:

Designer:

- L. By signing this Agreement, the representatives of the parties represent that they are duly authorized by their principal to execute this Agreement, and that they have agreed to be bound by all of its provisions.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF WICHITA, KANSAS**

By: \_\_\_\_\_

Title: \_\_\_\_\_

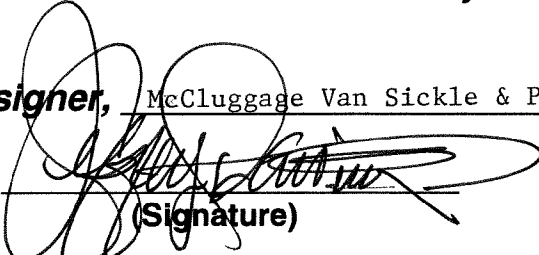
Date: \_\_\_\_\_, 2009

**ATTEST:**

\_\_\_\_\_  
*City Clerk*

APPROVED AS TO FORM: \_\_\_\_\_  
*City Attorney*

**Designer,** McCluggage Van Sickle & Perry

By:   
(Signature)

Name: Jeffrey T. Van Sickle  
(Type or Print)

Date: May 29, 2009

# ATTACHMENT 1

## **I. Project Management Plan (PMP)**

*Participants of the plan are identified as Owner (O), Designer (D), Shared Task among Owner and Designer (O/D).*

### **Objective:**

To develop a plan document at the beginning of the project, to be updated periodically. The plan will be developed in collaboration with the Program Manager. Elements of the plan will include the following:

### **Activities:**

1. Verify project description and scope of work. (O)
2. Develop a work plan, identifying responsibilities, tasks and timelines. (O/D)
3. Establish milestone dates and procedures for periodic progress reviews. (O/D)
4. Establish a quality control which will include the following procedures: (D)

Assignment of a senior level architect to act as the Quality Control Representative. (QCR). This person will not be a part of the day-by-day architectural process.

Under the direction of the QCR, conduct a review of the project at selected intervals. This review may include other design professionals, including the firm's construction administrators. This review is intended to address technical appropriateness and accuracy, coordination among the various disciplines, and other issues.

Perform periodic review of the project scope against the written program document, to be developed during the Preliminary Design Phase (30%), to assure that programmatic requirements are being met.

5. Work with City and ASR Team to establish external communication plan and key dates, including workshops and public meetings. Two such public meetings are anticipated. (O/D)
6. Work with City and ASR Team to establish the plan for controlling project documentation, utilizing as much electronic communication as possible, including e-mail, FTP sites, and other means. Communication will largely be accomplished through the existing ASR website, and will include meeting minutes, drawings, and schedules. (O/D)



7. Develop the policy for identifying and implementing scope changes during the design phase. (O/D)
8. Identify key sub-consultants, responsibilities of each, and communication methods. All communications should be between the Program Manager and Designer. (D)
9. Establish the scope, frequency, and detail of project budgeting during the design phase. (O/D)

**Deliverables:**

- Written PMP plan, including preliminary schedule.

## **II. Preliminary Design (30%)**

**Objective:**

The objective of this phase is to establish the initial project scope and budget.

### **A. Programming and Schematic Design**

**Activities:**

1. Conduct initial workshop with user groups.
2. Inventory and obtain physical characteristics of equipment and vehicles.
3. Working with user groups, analyze space needs and develop written program document.
4. Based upon these needs, prepare conceptual drawings for review and approval.
5. Prepare Table of Contents of Specifications.
6. Prepare rendering of facility.
7. Obtain owner approvals as required.
8. Hold public meeting, if desired.

9. Conduct coordination meeting with designer of SWTP facilities.

10. Prepare Schematic Design project budget.

**Owner Input:**

1. Attendance at meetings.
2. Identify user groups to participate in process.
3. Provide equipment and materials storage inventory, including existing and anticipated.
4. Convene and conduct public meetings.
5. Review and approval of this phase.

**Deliverables:**

- Preliminary Program Document
- Conceptual Drawings
- Rendering
- Preliminary Project Budget
- Table of Contents of Specifications

**B. Design Development**

**Objective:**

To refine and continue to develop the project, based upon an approved project scope and budget.

**Activities:**

1. Prepare Design Development documents, including floor plans, elevations, equipment layouts, preliminary sections, details and schedules.
2. Begin work with engineers and incorporate structural, electrical and mechanical systems into project.
3. Update written program document.
4. Prepare preliminary civil/site drawings.

5. Prepare outline specifications.
6. Prepare Design Development project budget.

**Owner Input:**

1. Attendance at meetings.
2. Review and approval of this phase.

**Deliverables:**

- Updated Program Document
- Design Development Drawings
- Updated Project Budget
- Outline Specifications

**C. 30% Design**

**Objective:**

To complete the first portion of the construction documentation phase of the project.

**Activities:**

1. Upon approval of the Design Development phase, prepare 30% complete Construction Documents, including a Table of Contents for the Specifications.
2. Conduct coordination meeting with designer of SWTP facilities.
3. Conduct coordination meeting(s) with governing agencies.
4. Continue coordination and work with consulting engineers.
5. Conduct workshop to review project with entire design team and all user groups.
6. Update project budget.
7. Recommend a construction schedule.
8. Attend public workshop or hearing as requested by Owner.

**Owner Input:**

1. Attendance at meetings.
2. Review and approval of this phase.

**Deliverables:**

- Updated Program Document
- 30% Complete Construction Documents
- Updated Project Budget
- Draft Specifications

**III. Support Services****Objective:**

To hold public meetings, hearings or other publicity as directed.

**Activities:**

1. Meet with Owner to determine the need for above.
2. Schedule the activities and communicate them to the design team.

**Owner Input:**

1. Determine and communicate the need for public meetings and hearings.

**Deliverables:**

- Attendance at public meetings and hearings.

**IV. Preliminary Design Report (PDR)****Objective:**

To author a report summarizing the project to date. Included in this report will be the following:

1. Design criteria.
2. Project budget.
3. List of equipment and materials to be accommodated.

4. Written description of project, including building systems and engineering systems.
5. Color boards for architectural finishes.

**Owner Input:**

1. Review and comment on the report.

**Deliverables:**

- Six (6) copies of the final report and one (1) electronic copy

**V. Final Design**

**Objective:**

To author the final design report.

**Activities:**

1. Author the final PDR.
2. Prepare final documents, including all engineering documents, for 60% review.
3. Conduct workshop to review project with entire design team and all user groups.
4. Continue coordination with design of SWTP facilities.
5. Upon approval, prepare documents, including all engineering documents, for 100% completion.

**Owner Input:**

1. Review and approve the final submittal.

**Deliverables:**

- Final Written Document
- 100% Complete Drawings and Specifications
- Final Project Budget
- Color Boards
- Construction Schedule

## **VI. Bid/Negotiation Phase**

### **Objective:**

To assist the Owner in issuing the Project for competitive construction bids.

### **Activities:**

1. To accept and respond to questions from contractors, vendors, suppliers, plan rooms and others during the bid phase.
2. In response to questions, issue written addenda, including written and graphic material as appropriate to the Owner for distribution to the bidders.

### **Owner Input:**

1. Print bid documents.
2. Distribute bid documents, including administration of required deposits.
3. Maintain log of plan holders.
4. Distribute addenda when received by the Architect.
5. Establish bid date.
6. Conduct bid opening.
7. Analyze bids.
8. Award contract and write Owner-Contractor Agreement.

## **VII. Exclusions from Architect's Services**

1. Platting and zoning services.
2. Geotechnical report.
3. Topographical and boundary survey.
4. Environmental services, including but not limited to contaminated soils or groundwater, asbestos abatement, lead paint and other hazardous material abatement, Phase I and II services, and other related services.
5. The design of water retention/detention systems.

6. An erosion control plan is included; the SWPPP/NOI permit application is included as an optional additional service.
7. Storm water drainage will be handled above ground; no underground piping or structures.
8. The specification and selection of furnishings and moveable equipment.
9. Construction phase services.
10. Plan review fees and building permit or other fees charged by jurisdictional authorities.
11. Telecommunications design, including the design of any wiring or equipment for telephone, data network, sound security or TV systems (conduit design only).
12. The design of a lighting protection system.
13. The design of paint booths.
14. The design of storm shelters or safe rooms.
15. Arc flash calculations.
16. Fire sprinkler design, if required, will be by performance specification only.
17. Preparation of “as-built” record drawings.

## MEMORANDUM OF UNDERSTANDING

### Section III, Paragraph E

Design Error shall be interpreted as a construction change that requires reconstruction of elements of the project and the additional cost associates with that change.

Design Omission shall be interpreted as a construction change that requires additional construction of elements required for the project but not shown on the bidding documents or addenda and the cost associated with that change.



# ATTACHMENT 2

# SCHEDULE

To be sent twenty (20)  
days following receipt  
of Notice to Proceed.

# ATTACHMENT 3



# MCCLUGGAGE VAN SICKLE & PERRY

## REVISED FEE PROPOSAL

Request for Qualification No. – FP930012

ASR PROGRAM – PHASE II PROJECTS

WICHITA WATER UTILITIES

Task/Phase	POSITION / HOURLY RATE										TOTALS			
	Principal / Project Mgr.	Project Architect	Space Planner	Architect	Drafting	Clerical	QA/QC	Architectural Hours		Total Architectural Fees	Engineering Fees	TOTAL FEES		
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>A PROJECT MANAGEMENT PLAN</b>														
MVP FEES	12	8	0	0	0	3	0	0	23	0	0	0	0	1,983
<b>B PRELIMINARY DESIGN (30%)</b>														
B1 Programming and Schematic	11	30		30	30	9		110						
Space Needs Analysis			22			6			28					
Rendering				35					35					
Quality Assurance							4		4					
NSP Hours	11	30	22	65	30	15	4							
MVP FEES	\$ 1,100	\$ 2,430	\$ 1,716	\$ 3,640	\$ 1,500	\$ 675	\$ 436			\$ 11,497				
Structural											\$ 4,600			
Mechanical											\$ 5,505			
Electrical											\$ 6,015			
Civil											\$ 5,415			
Geotechnical Engineering											\$ 6,000			
<b>B2 Design Development</b>	16	46		45	45	13		165						39,032
Quality Assurance							10		10					
MVP FEES	\$ 1,600	\$ 3,726		\$ 2,520	\$ 2,250	\$ 585	\$ 1,090			\$ 11,771				
Structural											\$ 6,615			
Mechanical											\$ 5,505			
Electrical											\$ 6,015			
Civil											\$9,190			39,096

Request for Qualification No. – FP930012  
 ASR PROGRAM – PHASE II PROJECTS  
 WICHITA WATER UTILITIES

Task/Phase	POSITION / HOURLY RATE							TOTALS			
	Principal / Project Mgr.	Project Architect	Space Planner	Architect	Drafting	Clerical	QA/QC	Architectural Hours	Total Architectural Fees	Engineering Fees	TOTAL FEES
	\$ 100	\$ 81	\$ 78	\$ 56	\$ 50	\$ 45	\$ 109				
B3 30% Design	27	75		73	73	27		275			
Quality Assurance							10		10		
MVP FEES	\$ 2,700	\$ 6,075		\$ 4,088	\$ 3,650	\$ 1,215	\$ 1,090		\$ 18,818		
Structural										\$ 6,615	
Mechanical										\$ 5,505	
Electrical										\$ 6,015	
Civil										\$9,190	\$ 46,143
C Support Services	20					2			22		
MVP FEES	\$ 2,000					\$ 90			\$ 2,090		\$ 2,090
D Preliminary Design Report	27					8			35		
MVP FEES	\$ 2,700					\$ 360			\$ 3,060		\$ 3,060
E Final Design (60%)	27	75		73	73	27		275			
Quality Assurance							20		20		
MVP FEES	\$ 2,700	\$ 6,075		\$ 4,088	\$ 3,650	\$ 1,215	\$ 2,180		\$ 19,908		\$ 53,428
Structural										\$ 6,615	
Mechanical										\$ 5,505	
Electrical										\$ 6,015	
Civil										\$15,385	
E Final Design (100%)	27	75		73	73	27		275			
Quality Assurance							20		20		
MVP FEES	\$ 2,700	\$ 6,075		\$ 4,088	\$ 3,650	\$ 1,215	\$ 2,180		\$ 19,908		
Structural										\$ 6,615	
Mechanical										\$ 5,505	
Electrical										\$ 6,015	
Civil										\$9,190	\$ 47,233

Request for Qualification No. – FP930012  
ASR PROGRAM – PHASE II PROJECTS  
WICHITA WATER UTILITIES

Task/Phase	POSITION / HOURLY RATE							TOTALS			
	Principal / Project Mgr.	Project Architect	Space Planner	Architect	Drafting	Clerical	QA/QC	Architectural Hours	Total Architectural Fees	Engineering Fees	TOTAL FEES
F Bid/Negotiation Phase	\$ 100	\$ 81	\$ 78	\$ 56	\$ 50	\$ 45	\$ 109				
	2	8	0	24	16	8	4	62			
Respond to Questions/Write Addenda	\$ 200	\$ 648	\$ -	\$ 1,344	\$ 800	\$ 360	\$ 436			\$ 3,788	\$ 7,376
Total Fees								1100	207	\$ 89,035	\$ 232,066
EXPENSES											
Reprographics											\$ 17,000
Supplies											\$ 250
Telephone/Postage/Couriers											\$ 1,000
Local Travel											\$ 350
Total Expenses											\$ 18,600
Grand Total											\$ 250,666
154											
Optional Additions Service for SWPPP/NOI Permit											\$ 4,887

See next page for Engineering Fee Breakdown



# MCCLUGGAGE VAN SICKLE & PERRY

BACKUP TO ENGINEERING FEES  
Request for Qualification No. – FP930012  
ASR PROGRAM – PHASE II PROJECTS  
WICHITA WATER UTILITIES

Task/Phase	POSITION / HOURLY RATE							TOTALS		
	Structural Engineering	Structural Design/Drafting	Civil Engineering	Civil Design/Drafting	Mechanical Engineering	Mechanical Design/Drafting	Electrical Engineering	Electrical Design/Drafting	TOTAL FEES	
B PRELIMINARY DESIGN (30%)	\$85	\$55	\$139	\$61	\$121	\$75	\$115	\$75		
B1 Programming and Schematic										
Structural	36	28							\$4,600	
Mechanical					30	25			\$5,505	
Electrical							36	25	\$6,015	
Civil			27	27					\$5,415	
B2 Design Development										
Structural	39	60							\$6,615	
Mechanical					30	25			\$5,505	
Electrical							36	25	\$6,015	
Civil			45	48					\$9,190	
B3 30% Design										
Structural	39	60							\$6,615	
Mechanical					30	25			\$5,505	
Electrical								25	\$6,015	

Request for Qualification No. – FP930012  
 ASR PROGRAM – PHASE II PROJECTS  
 WICHITA WATER UTILITIES

Task/Phase	POSITION / HOURLY RATE							TOTALS	
	Structural Engineering	Structural Design/Drafting	Civil Engineering	Civil Design/Drafting	Mechanical Engineering	Mechanical Design/Drafting	Electrical Engineering	Electrical Design/Drafting	TOTAL FEES
	\$85	\$55	\$139	\$61	\$121	\$75	\$115	\$75	
Civil			45	48					\$9,190
E Final Design (60%)									
Structural	39	60							\$6,615
Mechanical					30	25			\$5,505
Electrical							36	25	\$6,015
Civil			76	78					\$15,385
E Final Design (100%)									
Structural	39	60							\$6,615
Mechanical					30	25			\$5,505
Electrical							36	25	\$6,015
Civil			45	48					\$9,190
Grand Total	277	323	377.56	310.36	271	200	295	200	\$ 137,031



# ATTACHMENT 4

## **LIST OF TEAM MEMBERS AND KEY PERSONNEL**

1. Project Manager, Jeffrey W. Weiford
2. Specifications and Quality Control, Mark D. McCluggage
3. Project Architect, Scott A. Smith
4. Interior Design, David W. Clark
5. Site Planning/Landscape Architecture, Joseph D. Steffes
6. Structural Engineering, Ronald L. Brown, Mark McAfee
7. Electrical Engineering, Brian W. Braudaway
8. Mechanical Engineering, Jim Woody
9. Civil Engineering, Michael Russell
10. Civil Engineering, Ajamu K. Webster
11. Civil Engineering, Nicole Tauheed

# ATTACHMENT 5

City's  
Non-Discrimination and  
Equal  
Employment/Affirmative  
Action Program



**DEPARTMENT OF LAW  
INTEROFFICE MEMORANDUM**

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**TO:** Karen Sublett, City Clerk  
**FROM:** Gary E. Rebenstorf, Director of Law  
**SUBJECT:** Report on Claims for May, 2009  
**DATE:** June 4, 2009

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The following claims were approved by the Law Department during the month of May, 2009:

Cox Communications	\$241.29
Cox Communications	\$263.69
William Dawdy, Jr.	\$1,038.37

\*City Manager Approval

\*\*Settled for lesser amount than claimed

cc: Robert Layton, City Manager  
Kelly Carpenter, Director of Finance

City of Wichita  
City Council Meeting  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** 2007/2008 Sidewalk and Wheelchair Ramp Program  
(All Districts)

**INITIATED BY:** Department of Public Works

**AGENDA:** Consent

-----

**Recommendation:** Approve the amending ordinance.

**Background:** The Capital Improvement Program includes ongoing funding to construct sidewalks on major streets and wheel chair ramps that comply with the Americans with Disabilities Act. On November 6, 2007, the City Council adopted an ordinance that authorized bond funding for the 2007/2008 Sidewalk and Wheelchair Ramp Program. The ordinance contained an error in describing one of the sidewalk locations as the “Riverside Sidewalk”. The State Statute requires that the location be referenced as a city street.

**Analysis:** An amending ordinance has been prepared to correct the error.

**Financial Considerations:** The approved budget of \$900,000 is not affected.

**Goal Impact:** This project addressed the Efficient Infrastructure goal by improving pedestrian access along public streets.

**Legal Considerations:** The Law Department has approved the amending ordinance as to legal form.

**Recommendation/Action:** It is recommended that the City Council place the amending ordinance on first reading.

**Attachment:** Amending ordinance.

## Published in the Wichita Eagle on

ORDINANCE NO. 48-359

AN ORDINANCE AMENDING ORDINANCE NO. **47-674** OF THE CITY OF WICHITA, KANSAS DECLARING **13TH, BETWEEN GATEWOOD AND WEBB; MACARTHUR, BETWEEN BROADWAY AND LAURA; OLIVER, BETWEEN 17TH AND 21ST; ROCK, BETWEEN THE UNION PACIFIC RAILROAD TRACKS AND 45TH STREET NORTH; LINCOLN, BETWEEN BLUFF AND BLUFFVIEW; 21ST STREET AT THE BIKE PATH LINK WEST OF MAIZE; MERIDIAN, BETWEEN 31ST STREET SOUTH AND I-235; TYLER, BETWEEN 29TH STREET NORTH AND MAIZE SCHOOL AND ARKANSAS, BETWEEN 42ND STREET NORTH AND 45TH STREET NORTH 2007/2008 SIDEWALK AND WHEELCHAIR RAMP PROGRAM (472-84604)** TO BE MAIN TRAFFICWAYS WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAYS; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

SECTION 1. SECTION 1 of Ordinance **47-674** is hereby amended to read as follows:

“SECTION 1. That **13th, between Gatewood and Webb; Macarthur, between Broadway and Laura; Oliver, between 17th and 21st; Rock, between The Union Pacific Railroad Tracks and 45th Street North; Lincoln, between Bluff and Bluffview; 21st Street at the bike path link west of Maize; Meridian, Between 31st Street South and I-235; Tyler, Between 29th Street North and Maize School and Arkansas, between 42nd Street North and 45th Street North 2007/2008 Sidewalk and Wheelchair Ramp Program (472-84604)** in the City of Wichita, Kansas are hereby designated and established as main trafficways, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. 12-685.”

SECTION 2. SECTION 2 of Ordinance **No. 47-674** is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared necessary by the governing body of the City of Wichita, Kansas, to make improvements to **13th, between Gatewood and Webb; Macarthur, between Broadway and Laura; Oliver, between 17th and 21st; Rock, between The Union Pacific Railroad Tracks and 45th Street North; Lincoln, between Bluff and Bluffview; 21st Street at the bike path link west of Maize; Meridian, between 31st Street South and I-235; Tyler, between 29th Street North and Maize School and Arkansas, between 42nd Street North and 45th Street North 2007/2008 Sidewalk and Wheelchair Ramp Program (472-84604)** as main trafficways in the following particulars:

The design and construction of sidewalk and wheelchair ramps listed on attached as Exhibit A necessary for a major traffic facility.”

SECTION 3. The original SECTIONS 1 and 2 of Ordinance **No. 47-674** are hereby repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the Governing body of the City of Wichita, Kansas this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Subleitt, City Clerk

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law



## EXHIBIT A

Harbor Light at Harbor Light Ct.; Arkansas at 37<sup>th</sup> St. North; Whispering Brook at 37<sup>th</sup> St. North; Shadow Lakes at Tyler; Poplar at 14<sup>th</sup> St. North; 11<sup>th</sup> St. North at Coolidge/Perry; Murdock at Perry; Porter at 19<sup>th</sup>; Lulu at English; Broadway at Lincoln; North Shore Blvd. At Sandplum; Sandplum at 21<sup>st</sup> St. North; Northridge at Tyler; Chadsworth at Chadsworth Ct./Sterling; Chartwell Cir. at Crestline; Crestline at Crestline Ct.; Parkdale at Ryan; Parkdale at Bristlecone/Ryan; Cheryl at Wood; Nantucket at Thurman; Valleyview at 17<sup>th</sup> St. North; Westfield at 17<sup>th</sup> St. North; Brunswick at Suncrest; Custer at 18<sup>th</sup> St. North; Del Sienna at West St.; Murdock at Sheridan; Acadia at Wilbur; Denmark at Sunset/Sunset Ct.; Ponderosa at Wilbur; Binter at Parkridge; Edwards north of Douglas; Edwards at 1<sup>st</sup> St. North; Rocky Creek Pkwy at 127<sup>th</sup> St. East; Ellson at 2<sup>nd</sup> St. North; Central at Lancaster; Limerick at 159<sup>th</sup> St. East; Lincoln at 127<sup>th</sup> St. East; Gilbert at Whittier; Cornelison Cir. at Sunridge; Bay Country at Central; Forestview at 13<sup>th</sup> St.; Hickory Creek at 13<sup>th</sup> St. North; Burton at 135<sup>th</sup> St. West; Douglas at 135<sup>th</sup> St. West; Texas at 135<sup>th</sup> St. West; Old Lawrence at 31<sup>st</sup> St. South; Chase at 30<sup>th</sup> St. South; Amidon at 34<sup>th</sup> St. North; Clarence at 31<sup>st</sup> St. North; Arkansas at 32<sup>nd</sup> St. North; Ridgeport at 29<sup>th</sup> St. North; 21<sup>st</sup> St. North at Mascot/Shelton; Harrison at Buffum/Faulkner; Harrison at Faulkner/Litchfield; North River Blvd. At 13<sup>th</sup> St. North; Washington at Zimmerly; Meridian at Irving/Walker; Pawnee at Mead/Santa Fe; Briarwood at Scouller; Bartlett at Bartlett Ct.; Bartlett at Lark; Mesa at Mesa Ct.; Nantucket at Stoney Point; Byron at Nantucket; Maybelle Place at Thurman; Murray at Murray Ct.; Valleyview at 21<sup>st</sup> St. North; Illinois at 17<sup>th</sup> St. North; McComas at 17<sup>th</sup> St. North; West St. at 11<sup>th</sup> St. North; Country Acres at 12<sup>th</sup> St. North; Woodchuck at 2<sup>nd</sup> St. North; 1<sup>st</sup> St. North at Edwards/Gordon; Cedar Park at Central; Highland Springs at 135<sup>th</sup> St. West; Riverside at W. Riverside Blvd.; 1<sup>st</sup> St. North at Athenian/St. Clair; High at 18<sup>th</sup> St. North; 1<sup>st</sup> St. North at Gordon/St. Paul; Nantucket at Westfield/Westfield Ct.; West St. at 20<sup>th</sup> St. North; Amidon at 24<sup>th</sup> St. North; Amidon at Columbine; Benjamin at 21<sup>st</sup> St. North; Richmond at 21<sup>st</sup> St. North; Somerset at 22<sup>nd</sup> St.; Sweetbriar at 21<sup>st</sup> St. North; Pine at St. Francis; Elm at St. Francis; Pine at Woodrow; Athenian at 2<sup>nd</sup> St. North; Valleyview at Valleyview Ct.; Dunsworth at Ponderosa; and Rolling Hills at Tyler.

ORDINANCE NO. 48-358

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

**SECTION 1.** That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

**Case No. ZON2009-00011**

Zone change from GO General Office ("GO") to OW Office Warehouse ("OW") subject to the provisions of Protective Overlay #231 on property described as:

Lot 1, Block 1, Oak Knoll 3<sup>rd</sup> Village Addition, Wichita, Sedgwick County, Kansas; generally located southeast of the Oak Knoll – Pawnee Avenue intersection, east of Rock Road.

**SUBJECT TO APPROVAL BY THE GOVERNING BODY AND THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #231:**

- (a) Retain the GO General Office ("GO") zoning along the east and south 25 feet of Lot 1, Block 1, Oak Knoll 3rd Addition (subject site). This will serve as a 25-foot setback, open space, landscape buffer on the south and east sides of the subject site, where it abuts the existing residential developments.
- (b) No paving, storage, parking, or placement of equipment, including cars, trucks, graders, power shovels, skid steer, forklifts, chemicals, fuels, sand, gravel, forms, rebar, ties, hand tools or any materials or products within the 25-foot setbacks that serve as the open space, landscape buffer. No trash receptacles may be placed within the 25-foot setbacks that serve as the open space, landscape buffer, and all trash receptacles shall be screened.
- (c) No operation of power equipment is permitted within the 25-foot setbacks that serve as the open space, landscape buffer. Power equipment for mowing, trimming and care of the landscape within the 25-foot setbacks that serve as the open space, landscape buffer are the exception and are permitted.
- (d) No stacking of materials higher than 7 feet is permitted. All dirt, gravel or sand stored on the site will be watered to control dust, and placed on the northwest end of the site, at a distance no greater than 200 feet south of Oak Knoll and 200 feet from the west property line and will be enclosed on three sides with solid screening.
- (e) The Unified Zoning Code's Compatibility height standards are in effect, except that no building shall exceed a maximum height of 50 feet.
- (f) No bay doors or openings on buildings are allowed on their south or east facing walls.
- (g) All vehicle repair shall be done inside existing or new buildings

- (h) Parking of trucks and motorized equipment on the site will be no closer than 100 feet from the subject site's south side, where it abuts single-family residential development, and no closer than 50 feet around the rest of the subject site, where it abuts multifamily residential and/or condo development. All parking and storage areas will be per City Code; gravel for the areas where there is the storage of equipment and materials, paving for any drives and circulation aisles into the storage areas. The gravels areas will be watered, as needed, to control dust.
- (i) The following uses are permitted, except over the east and south 25 feet of the lot: College or University; Government Service; Community Assembly; Day Care, General; Library; Safety Service; Animal Care Limited; Automated Teller Machine; Bank or Financial Institution; Broadcast/Recording Studio; Construction Sales and Service; Farmer's Market in the City; Monument Sales; Nurseries and Garden Centers; Office, General; Personal Care Service; Personal Improvement Service; Post Office Substation; Printing and Copying, Limited; Retail General; Vocational School; Warehouse, Self-service Storage; Research Services; Warehousing; Wholesale or Business Services.
- (j) The limitation on outdoor storage contained in the OW district is waived. Materials that may be stored outside shall be limited to those associated with the uses permitted by this PO. Materials stored outside shall not occupy any setback or buffer areas established by this PO.
- (k) Lighting standards must be no taller than 15 feet, including the base, and be hooded to direct light onto the site, away from residential property. No lights shall be placed within the 25-foot setbacks that serve as the open space, landscape buffer.
- (l) A mix of evergreens, as listed in the landscape ordinance, shall be planted with a minimum height of two to three feet above the existing 8 foot concrete screening wall and planted on 16-foot centers, within the 25-foot setback, open space, landscape buffer, along the south and east sides of the subject site. Any replacement of dead evergreens would be per the same minimum height of two to three feet above the existing eight- foot concrete screening wall and will be done during the planting season when they died. The landscape plan shall prepared by a licensed landscape architect, be reviewed and approved by the Planning Department prior to the ordinance being published. The landscape plan shall include an irrigation system for maintenance of the approved landscape. All planting and the irrigation system must be in place within the 2009 planting season.
- (m) The solid masonry screening walls, along the east, south and north sides of the subject site shall be retained and shall be maintained in good repair.
- (n) No outside speakers/amplification communication system capable of being heard beyond the applicant's property line shall be utilized.
- (o) The applicant shall dedicate 10 feet of ROW, as agreed by the applicant and the Traffic Engineer, along Oak Knoll, and provide proof of the dedication prior to the ordinance being published.
- (p) The site shall be developed and operated in conformance will all applicable local, state and federal codes.
- (q) If the Zoning Administrator finds that there is a violation of any of the provisions of the Protective Overlay, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the zoning is null and void.

**SECTION 2.** That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

**ADOPTED AT WICHITA, KANSAS,** July 7, 2009.

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Carl Brewer - Mayor

**ATTEST:**

---

Karen Sublett, City Clerk

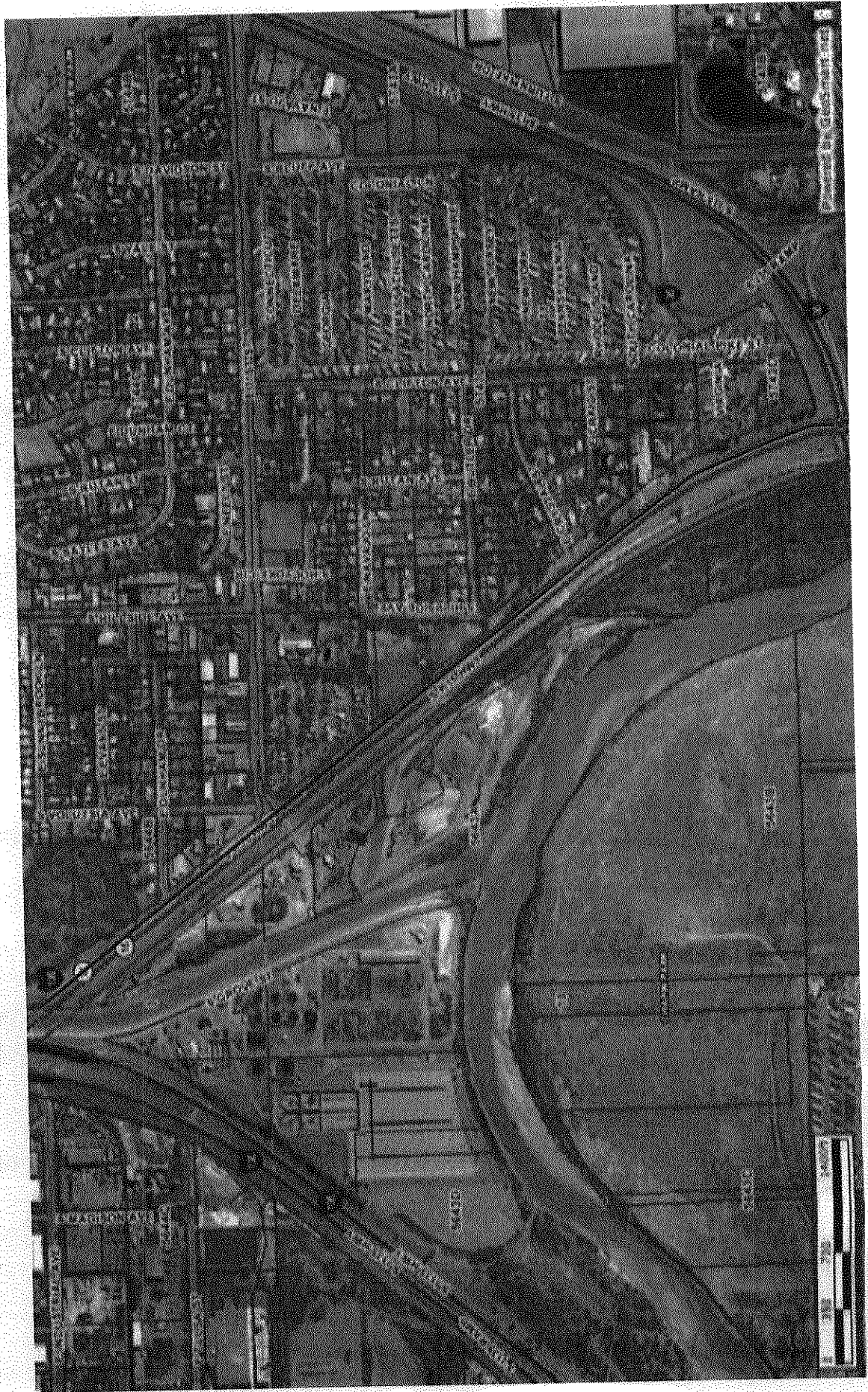
(SEAL)

Approved as to form:

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Gary E. Rebenstorf, City Attorney

**KLINK 2012 Location: K-15 (NB Only), KTA Bridge to I-135**



City of Wichita  
City Council Meeting  
June 23, 2009

**TO:** Mayor and City Council

**SUBJECT:** Southeast Water Transmission Main (Districts I, II, and IV)

**INITIATED BY:** Water Utilities

**AGENDA:** Consent

---

**Recommendation:** Amend the CIP and approve the 2009 expenditure for the Southeast Transmission Main from Exposition and Maple to the Southeast Booster Pump Station.

**Background:** On April 8, 2003, the City Council approved a Water Master Plan Update. The firm of Burns & McDonnell was selected for professional services. In the 2004 Water Master Plan, potential water pressure problems were identified. A new transmission main from Exposition and Maple to Gouverneur and Osie was identified as being necessary to solve the water pressure situation. This included a booster pump station at Gouverneur and Osie which was also deemed necessary.

**Analysis:** The booster pump station was completed in 2006 and is fully operational. Phases 1-A, 1-B and 1-C, of the Southeast Transmission Main are complete. Phase 2-A and part of 1-D are being constructed during 2009. Design of Phase 3 and construction of 2-B and 1-D are scheduled for construction during 2009, as well.

**Financial Considerations:** Funding is included in the Proposed 2009-2018 Capital Improvement Program (CIP) for Maple and Exposition to Southeast Booster Pump Station, CIP W-1194. The revised total budget for the project is \$27,800,000. In April 2005, the City Council approved an initial project budget, which totaled \$12.8 million in phases that reflect \$2.0 million appropriated in 2005, \$6.4 million in 2006, and \$4.4 million in 2007. The amount necessary to complete the next phase of the project is \$15 million.

**Goal Impact:** This project addresses ensuring efficient infrastructure by accommodating growth in southeast Wichita and the future growth areas of southeast Sedgwick County, ensuring reliable water service to the Water Utility customers.

**Legal Considerations:** The Law Department has approved the Resolution as to form.

**Recommendations/Actions:** It is recommended that the City Council: 1) amend the CIP; 2) approve the 2009 expenditure; 3) adopt the Resolution; and 4) authorize the necessary signatures.

**Attachments:** Resolution

## RESOLUTION NO. 09-186

A RESOLUTION AMENDING RESOLUTION NO. **5-203** PERTAINING TO THE **SOUTHEAST WATER TRANSMISSION MAIN (W-1194)** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That Section 1 of Resolution No. **5-203** is hereby amended to read as follows:

**“SECTION 1.** It is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas **Water and Sewer Utility** such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, **Southeast Water Transmission Main (W-1194)** (called the “Project”). The total costs of the Project are estimated to be **\$27,800,000** exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.”

SECTION 2. That Section 3 of Resolution No. **5-203** is hereby amended to read as follows:

**“SECTION 3.** It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed **twenty-seven million eight hundred thousand dollars (\$27,800,000) in 2009** exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.”

SECTION 3. That the original of Sections 1 and 3 of Resolution **5-203** is hereby rescinded.

Adopted at Wichita, Kansas June 23, 2009.

(Seal)

\_\_\_\_\_  
CARL BREWER, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
GARY E. REBENSTORF, Director of Law

Published in the Wichita Eagle on June 36, 2009

**NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED \$27,800,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.**

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 09-186, duly adopted June 23, 2009, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Southeast Water Transmission Main (W-1194) (called the "Project"). The total costs of the Project are estimated to be twenty-seven million eight hundred thousand dollars (\$27,800,000) in 2009, exclusive of the cost of interest on borrowed money. The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed \$27,800,000 in 2009, exclusive of the cost of interest on borrowed money, under the authority of K.S.A. 10-1201 et seq., as amended and supplemented. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within Fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on June 29, 2009.

/s/ CARL BREWER, Mayor

ATTEST:

/s/ KAREN SUBLETT, City Clerk



# Funding Application

Section 8 Tenant-Based Assistance  
Rental Certificate Program  
Rental Voucher Program

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing

OMB Approval No. 2577-0169  
(exp.9/30/2010)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Wichita Housing Authority  
332 N. Riverview St.  
Wichita, Kansas 67203

Application/Project No. (HUD use only)

Do you have an ACC with HUD	No	Yes	Date of Application	Legal Area of Operation (area in which the HA has authority under State and local law to administer the program)
for Section 8 Certificates?	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
for Section 8 Vouchers?	<input type="checkbox"/>	<input checked="" type="checkbox"/>		

## A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)	County	Congressional District	Units

## B. Proposed Assisted Dwelling Units.

(Complete this section based on the unit sizes of the applicants at the top of the waiting list)

	Number of Dwelling Units by Bedroom Size							Total Dwelling Units
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates								
Vouchers	8	12	10	5				

## C. Average Monthly Adjusted Income.

Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	\$	\$	\$	\$	\$	\$	\$
Vouchers	\$	\$	\$	\$	\$	\$	\$

## D. Need for Housing Assistance.

Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

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**E. Housing Quality Standards (HQS).** (Check applicable box)

☒ HUD's HQS will be used with no modifications      ☐ Attached for HUD approval are HQS acceptability criteria variations

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**F. New HA Information.** Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

**Financial and Administrative Capability.** Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

**Qualification as an HA.** Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

**Note:** If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

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**G. Certifications.** The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

**Equal Opportunity Certification**

The Housing Agency (HA) certifies that:

- (1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.
- (2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.
- (3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).
- (4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- (5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.
- (6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

- (7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.
- (8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

**Certification Regarding Lobbying**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### Certification Regarding Drug-Free Workplace Requirements

#### Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

**Controlled substance** means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

**Conviction** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

**Criminal drug statute** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

**Employee** means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

332 N. Riverview St.  
Wichita, Kansas 67203

Check ☐ if there are workplaces on file that are not identified here.

**Housing Agency Signature**

Signature of HA Representative

Print or Type Name of Signatory

Mary K. Vaughn

Phone No.

316-462-3795

Date

06/23/2009

**City of Wichita  
City Council Meeting  
June 23, 2009**

**TO:** Mayor and City Council

**SUBJECT:** Water and Sewer Utility Revenue Bonds, Series 2009A and 2009B

**INITIATED BY:** Department of Finance

**AGENDA:** Consent

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**Recommendation:** Adopt the amending Bond Resolution and approve the revised Bond Purchase Agreement.

**Background:** In anticipation of the issuance of revenue bonds, the Water Utilities have drawn down cash reserves to fund the costs of improvement projects that were previously authorized for bond financing. On May 19, 2009, the City Council authorized the issuance of tax-exempt revenue bonds in the approximate amount of \$125 million (Series 2009A) to permanently finance a portion of project costs and reimburse prior cash reserve expenditures through negotiated sale. The City Council also authorized the issuance of taxable revenue bonds (Series 2009B) through a negotiated sale in the approximate amount of \$12.1 million to fund the debt service reserve requirements of prior bond issues in accordance with the bond covenants. Also on May 19, 2009, the City Council authorized Springsted Incorporated to perform financial advisory services for the City and authorized the use and selection of an underwriter for the purpose of assisting with and facilitating the negotiated sale of the revenue bonds.

On June 16, 2009, the City Council approved the Bond Purchase Agreement with Citigroup Global Markets Inc. and George K. Baum & Company, adopted the Bond Ordinance and Resolution, authorized the Mayor to execute the Request for Declaration of Emergency and authorized preparation and distribution of the final Official Statement upon completion.

**Analysis:** Upon review of the draft Official Statement, the lead underwriter, Citigroup, identified that the redemption provisions according to Section 303 and Appendix C of Resolution No. 09-174 and the Bond Purchase Agreement passed and approved by the City Council on June 16, 2009, provided for redemption of the Series 2009B (taxable) term bonds by lot in units of \$5,000, rather than on a pro rata basis. For taxable term bonds, it is customary practice for the selection of bonds to be redeemed on a pro rata basis. These changes to the Resolution and Bond Purchase Agreement are considered technical in nature and reflect the actual terms regarding the method of selection of the 2009B bonds for mandatory redemption, under which the bonds will be marketed and sold to purchasers by the underwriters. The closing on the Series 2009 Bonds is scheduled on June 30, 2009.

**Financial Considerations:** There is no financial impact to the City in making this technical change to Section 303 and Appendix C of the Bond Resolution and the Bond Purchase Agreement.

**Goal Impact:** The permanent financing of capital costs helps to ensure efficient infrastructure through construction efforts providing reliable, compliant and secure utilities. The Internal Perspective is also impacted as a result of the permanent financing of capital improvements and by offering these debt obligations through negotiated sale.

**Legal Considerations:** The City's Bond Counsel, Kutak Rock, LLP, has drafted the amending Resolution pertaining to Section 3 and Appendix C of Resolution No. 09-174 passed by the City Council on June 16, 2009. The revised Bond Purchase Agreement has been drafted by Underwriter's Bond Counsel, Gilmore & Bell, P.C., and has been reviewed by the City's Bond Counsel. These financing documents have been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the revised Bond Purchase Agreement and adopt the amending Resolution.

**Attachments:** Revised Bond Purchase Agreement  
Amending Bond Resolution

**CITY OF WICHITA, KANSAS**

**\$119,775,000**  
**WATER AND SEWER UTILITY REVENUE**  
**BONDS**  
**SERIES 2009A**

**\$12,845,000**  
**WATER AND SEWER UTILITY REVENUE**  
**BONDS**  
**SERIES 2009B**  
**(TAXABLE UNDER FEDERAL LAW)**

**AMENDMENT TO BOND PURCHASE AGREEMENT**

On the basis of the representations, warranties and covenants and upon the terms and conditions contained in the Bond Purchase Agreement dated June 16, 2009 (the "Bond Purchase Agreement"), Citigroup Global Markets Inc., as representative (the "Representative") and George K. Baum & Company (collectively the "Underwriter" or "Underwriters"), jointly and severally offered to purchase the following bonds to be issued by the City of Wichita, Kansas (the "City") under and pursuant to an Ordinance and Resolution passed and adopted, respectively, by the governing body of the City on June 16, 2009: \$119,775,000 aggregate principal amount of Water and Sewer Utility Revenue Bonds, Series 2009A (the "Series 2009A Bonds"), and \$12,845,000 aggregate principal amount of Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable under Federal Law ) (the "Series 2009B Bonds") (the Series 2009A Bonds and Series 2009B Bonds are referred to collectively herein as the "Bonds"). The City accepted and agreed to the Underwriters' offer on the same date.

The parties hereto now desire to amend *Exhibit A* to the Bond Purchase Agreement to conform the mandatory redemption features for the Series 2009B Bonds to those set forth in Resolution No. 09-187 of the City adopted this date, amending Resolution No. 09-174 adopted June 16, 2009, and to make additional technical amendments to *Exhibits B, C* and *D*.

Except as expressly modified in this Amendment to Bond Purchase Agreement, the Bond Purchase Agreement and the covenants contained therein are hereby ratified and confirmed.

Dated June 23, 2009

**CITIGROUP GLOBAL MARKETS INC.**  
**GEORGE K. BAUM & COMPANY**

By: **CITIGROUP GLOBAL MARKETS INC.,**  
as Representative for the Underwriter

By: \_\_\_\_\_  
Robert A. Mellinger, Vice President

**CITY OF WICHITA, KANSAS**

(Seal)

By: \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

By \_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law



**EXHIBIT A**

**CITY OF WICHITA, KANSAS**

**\$119,775,000**  
**WATER AND SEWER UTILITY REVENUE**  
**BONDS**  
**SERIES 2009A**

**\$12,845,000**  
**WATER AND SEWER UTILITY REVENUE**  
**BONDS**  
**SERIES 2009B**  
**(TAXABLE UNDER FEDERAL LAW)**

**CALCULATION OF PURCHASE PRICE**

	<i>Series 2009A</i>	<i>Series 2009B</i>
Principal Amount	\$119,775,000.00	\$12,845,000.00
Less Original Issue Discount	(797,011.80)	0.00
Plus Original Issue Premium	1,813,024.35	0.00
Less Underwriter's Discount	<u>(575,279.48)</u>	<u>(60,879.62)</u>
<b>Total Purchase Price</b>	<b>\$120,215,733.07</b>	<b>\$12,784,120.38</b>

**MATURITY SCHEDULES**

**SERIES 2009A**  
**SERIAL BONDS**

<b>Stated Maturity October 1</b>	<b>Principal Amount</b>	<b>Annual Rate of Interest</b>	<b>Price</b>	<b>Stated Maturity October 1</b>	<b>Principal Amount</b>	<b>Annual Rate of Interest</b>	<b>Price</b>
2010	\$1,830,000	4.000%	103.342	2022	\$4,660,000	5.000%	103.730*
2011	2,640,000	2.750	102.264	2023	4,785,000	5.000	103.068*
2012	2,685,000	3.000	102.527	2024	4,915,000	5.000	102.411*
2013	2,740,000	3.000	101.396	2025	5,050,000	5.000	102.003*
2014	2,790,000	3.500	102.165	2026	5,195,000	5.000	101.678*
2015	2,855,000	3.500	101.174	2027	5,345,000	5.000	101.273*
2016	2,920,000	4.000	102.721	2028	5,500,000	5.000	100.951*
2017	2,995,000	4.000	101.259	2029	5,670,000	5.000	100.470*
2018	3,075,000	4.500	103.829	2030	5,845,000	5.000	100.000
2019	3,170,000	4.250	100.656	2031	6,030,000	5.000	99.196
2020	4,430,000	5.000	105.663*	2032	6,220,000	5.000	98.505
2021	4,540,000	5.000	104.649*				

\*Priced to Call

**TERM BONDS**

<b>Stated Maturity October 1</b>	<b>Principal Amount</b>	<b>Annual Rate of Interest</b>	<b>Price</b>
2039	\$23,890,000	5.000%	97.256

**SERIES 2009B  
TERM BONDS**

<b><u>Stated Maturity October 1</u></b>	<b><u>Principal Amount</u></b>	<b><u>Annual Rate of Interest</u></b>	<b><u>Price</u></b>
2014	\$5,605,000	4.270%	100.00
2019	7,240,000	5.360	100.00

**REDEMPTION OF BONDS**

***Series 2009A***

***Optional Redemption*** The Series 2009A Bonds maturing 2010 through 2019, inclusive, shall become due on their respective maturities without the option of prior payment. At the option of the City, the Series 2009A Bonds maturing October 1, 2020, and thereafter, may be called for redemption and payment prior to their respective maturities on and after October 1, 2019. The Series 2009A Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid, at a redemption price equal to the principal amount thereof, plus accrued interest thereon to the date established for such redemption and payment.

***Mandatory Redemption.*** The 2009A Term Bonds maturing October 1, 2039 (the “2039 Term Bonds”) shall be subject to mandatory redemption by lot and payment on each October 1 commencing October 1, 2033, pursuant to the redemption schedules hereafter set forth, at the principal amount thereof, plus accrued interest thereon to the date established for redemption and payment, without premium. The City shall redeem the following principal amounts of such 2039 Term Bonds on October 1 in each of the following years:

<b><u>Year</u></b>	<b><u>Principal Amount</u></b>
2033	\$6,430,000
2034	6,635,000
2035	2,165,000
2036	2,165,000
2037	2,165,000
2038	2,165,000
2039*	2,165,000

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\*Final Maturity

***Series 2009B***

***Optional Redemption*** The Series 2009B Bonds are **not** subject to optional redemption prior to maturity.

***Mandatory Redemption.*** The 2009B Term Bonds maturing October 1, 2014 (the “2014 Term Bonds”) shall be subject to mandatory redemption pro rata and payment on each October 1 commencing October 1, 2010, pursuant to the redemption schedules hereafter set forth, at the principal amount thereof, plus accrued interest thereon to the date established for redemption and payment, without premium. The

City shall redeem the following principal amounts of such 2014 Term Bonds on October 1 in each of the following years:

<b><u>Year</u></b>	<b><u>Principal Amount</u></b>
2010	\$905,000
2011	1,100,000
2012	1,150,000
2013	1,200,000
2014*	1,250,000

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\*Final Maturity

The 2009B Term Bonds maturing October 1, 2019 (the “2019 Term Bonds”) shall be subject to mandatory redemption pro rata and payment on each October 1 commencing October 1, 2015, pursuant to the redemption schedules hereafter set forth, at the principal amount thereof, plus accrued interest thereon to the date established for redemption and payment, without premium. The City shall redeem the following principal amounts of such 2019 Term Bonds on October 1 in each of the following years:

<b><u>Year</u></b>	<b><u>Principal Amount</u></b>
2015	\$1,300,000
2016	1,370,000
2017	1,445,000
2018	1,520,000
2019*	1,605,000

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\*Final Maturity

“Pro rata” means in connection with any mandatory sinking fund redemption required to be made on the 2014 Term Bonds and the 2019 Term Bonds of any maturity, the amount that results from applying a fraction, the numerator of which is equal to the amount of such Term Bonds held by the Owner of such Term Bonds and the denominator of which is equal to the total amount of such Term Bonds outstanding.

**EXHIBIT B**

**FORM OF BOND COUNSEL SUPPLEMENTAL OPINION**

Governing Body  
City of Wichita, Kansas

Citigroup Global Markets Inc.,  
as representative of the Underwriters  
Chicago, Illinois

Re:     \$119,775,000 Water and Sewer Utility Revenue Bonds, Series 2009A and \$12,845,000  
          Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), of  
          the City of Wichita, Kansas

Ladies and Gentlemen:

Reference is made to our approving opinions of this date relating to the issuance by the City of Wichita, Kansas, of the referenced bonds (collectively the "Series 2009 Bonds") All capitalized terms used herein shall have the meanings set forth in Ordinance No. 48-351 and Resolution No. 09-174, as amended by Resolution No. 09-187, authorizing and securing the Series 2009 Bonds (collectively, the "Bond Ordinance").

In such connection, we have reviewed the Bond Ordinance, the Official Statement relating to the Series 2009 Bonds (the "Official Statement") and such other documents, certificates and opinions as we deem necessary to render this opinion. We have not undertaken to verify independently, and have assumed, the genuineness of such documents, certificates and opinions presented to us (whether as originals or as copies) and the accuracy of the factual matters represented, warranted or certified therein.

Based upon the foregoing, we are of the opinion, as of the date hereof, that the statements contained in the Official Statement under the captions "THE SERIES 2009 BONDS," "SECURITY FOR THE SERIES 2009 BONDS," "LEGAL MATTERS AND TAX EXEMPTION," and in "APPENDIX C - SUMMARY OF FINANCING DOCUMENTS" and "APPENDIX E - FORM OF BOND COUNSEL'S OPINIONS," reasonably and fairly summarize the principal provisions of the Bond Ordinance and other agreements and matters of law addressed therein and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

This opinion is delivered to you for your use only and may not be used or relied upon by, or published or communicated to, any third party for any purpose whatsoever, without our prior written approval in each instance.

KUTAK ROCK LLP

***EXHIBIT C***

**FORM OF CITY ATTORNEY OPINION**

Governing Body  
City of Wichita, Kansas

Kutak Rock LLP  
Kansas City, Missouri

Citigroup Global Markets Inc.,  
as representative of the Underwriters  
Chicago, Illinois

Gilmore & Bell, P.C.  
Wichita, Kansas

Re:     \$119,775,000 Water and Sewer Utility Revenue Bonds, Series 2009A and \$12,845,000  
Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), of  
the City of Wichita, Kansas

Ladies and Gentlemen:

This is to certify that I am Director of Law and City Attorney for the City of Wichita, Kansas (the "City"), and acting as such I have advised the City in connection with Ordinance No. 48-351 and Resolution No. 09-174, as amended by Resolution No. 09-187, passed and adopted, respectively, by the governing body of the City (collectively, the "Bond Ordinance"); and certain other certificates and proceedings of the City relating to the issuance of the above-referenced bonds (the "Series 2009 Bonds"). Capitalized terms contained herein shall have the meanings ascribed thereto in the Bond Ordinance.

I have become acquainted with the affairs of the City, and I have examined such documents, certificates and records, and have made such investigations as I have deemed necessary or appropriate in order to give the opinions expressed herein.

You are advised that, in my opinion:

1.       The City is a city of the first class duly organized and existing under the laws of the State of Kansas.
2.       The City by and through its governing body, did adopt the Bond Ordinance, and the Bond Ordinance is in full force and effect.
3.       The City has authorized the execution and delivery of the Series 2009 Bonds, the Bond Purchase Agreement, and all other documents authorized by the Bond Ordinance to be executed on the part of the City in connection with the execution and delivery of the Series 2009 Bonds (the "City Documents") and such City documents have been duly executed and delivered by the City in the manner authorized; the execution, delivery and performance of the City Documents will not conflict with any applicable law or constitute on the part of the City a breach or default under any agreement, indenture or instrument known to me to which the City is a party or by which it is bound.
4.       There is no civil controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or (except for any pending or future annexation or deannexation proceedings) its boundaries, the right or title of its officers to their respective offices, the legality of any official act or other proceedings of the City had in relation to the authorization, issuance, sale and delivery of the Series 2009 Bonds, the constitutionality or validity of the indebtedness represented by the Series 2009

Bonds, the validity of the Series 2009 Bonds, or the imposition and collection of Net Revenues of the Utility pledged to the repayment of the Series 2009 Bonds.

5. No facts have come to my attention which cause me to believe that the information contained in the Official Statement relating to the issuance of the Series 2009 Bonds, under the caption entitled "THE WICHITA WATER AND SEWER UTILITY" contains as of the date hereof any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances in which they were made, not misleading. No opinion is rendered with respect to other information or statements contained in the Official Statement, nor do I express an opinion as to the financial, technical or statistical data or any estimates, projections, assumptions or expressions of opinions included in the Official Statement or any appendix thereto.

I express no opinion regarding the tax-exempt status, present or future, of the Series 2009 Bonds.

Very truly yours,

Gary E. Rebenstorf  
City Attorney

**EXHIBIT D**

**FORM OF OPINION OF COUNSEL TO UNDERWRITER**

Governing Body  
City of Wichita, Kansas

Citigroup Global Markets Inc.,  
as representative of the Underwriters  
Chicago, Illinois

Re: \$119,775,000 Water and Sewer Utility Revenue Bonds, Series 2009A and \$12,845,000  
Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), of  
the City of Wichita, Kansas

We have acted as counsel to Citigroup Global Markets Inc., as representative of the underwriters listed in the hereinafter defined Bond Purchase Agreement (collectively, the "Underwriter") in connection with their purchase of the above-referenced bonds (collectively, the "Series 2009 Bonds") issued by the City of Wichita, Kansas (the "City") pursuant to the Bond Purchase Agreement dated June 16, 2009, as amended by the Amendment to Bond Purchase Agreement dated June 23, 2009 (collectively, the "Bond Purchase Agreement"), between the City and the Underwriter. The Series 2009 Bonds are issued pursuant to K.S.A. 10-1201 *et seq.*, as amended and supplemented from time to time (collectively, the "Act") and Ordinance No. 48-351 and Resolution No. 09-174, as amended by Resolution No. 09-187, (collectively, the "Bond Ordinance"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Bond Purchase Agreement.

In that connection, we have reviewed certain portions of (a) the Bond Ordinance; (b) the Official Statement dated June 16, 2009, with respect to the Series 2009 Bonds (the "Official Statement"); (c) the Bond Purchase Agreement; (d) the opinions referred to in the Bond Purchase Agreement; (e) the Continuing Disclosure Certificate of the City, dated as of June 30, 2009 (the "Disclosure Undertaking"); and (f) such other records, opinions and documents, as we have deemed appropriate as a basis for the conclusions hereinafter expressed.

In arriving at the conclusions hereinafter expressed, we are not expressing any opinion or view on, and with your permission are assuming and relying on, the validity, accuracy and sufficiency of the records, documents, certificates and opinions referred to above (including the accuracy of all factual matters represented and legal representations and legal conclusions regarding the due authorization, issuance, delivery, validity and enforceability of the Series 2009 Bonds). We have assumed that all records, documents, certificates, and opinions that we have reviewed, and the signatures thereto, are genuine.

Based on and subject to the foregoing, and in reliance thereon, we are of the opinion that:

- (1) the Series 2009 Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended;
- (2) the Bond Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended;

- (3) the Disclosure Undertaking provides a suitable basis for the Underwriter, in connection with the Offering of the Series 2009 Bonds (as defined in Rule 15c2-12 as promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Rule")), to make the determination required by paragraph (b)(5) of the Rule; and
- (4) the Bond Purchase Agreement has been duly authorized, executed and delivered by the representative of the Underwriter.

We are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements. However, in our capacity as counsel to the Underwriter, we have had discussions with representatives of the Underwriter and representatives of the City, counsel to the City, Bond Counsel, and others, with respect to the preparation of the Official Statement. In the course of our participation in such discussions and our review of the Official Statement and the documents referred to therein, nothing came to our attention that leads us to believe that the Official Statement (except for the financial and statistical data assumptions, conclusions, expectations and opinions included in the Official Statement, as to which we do not express any opinion), as of its date, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

This letter, and the legal opinions and other statements herein, are intended for the information solely of the addressees hereof and solely for the purposes of the transactions contemplated by the Bond Resolution and are not to be relied upon by any other person or entity, or for any other purpose, or quoted in whole or in part, or otherwise referred to, in any document, or to be filed with any governmental or other administrative agency or other person or entity for any purpose without our prior written consent.

We bring to your attention the fact that our legal opinions and conclusions are an expression of professional judgment and are not a guarantee of a result.

We do not undertake to advise you of matters which may come to our attention subsequent to the date hereof which may affect our legal opinions and conclusions expressed herein.

**GILMORE & BELL, P.C.**



## **RESOLUTION NO. 09-187**

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, AUTHORIZING CERTAIN MANDATORY REDEMPTION PROVISIONS WITH RESPECT TO THE CITY'S WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009B (TAXABLE UNDER FEDERAL LAW), AND AMENDING RESOLUTION NO. 09-174 OF THE CITY.

WHEREAS, the Governing Body the City of Wichita, Kansas (the "City"), pursuant to the Ordinance No. 48-351 passed on June 16, 2009, has authorized the issuance of the Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law) (the "Series 2009B Bonds") in the aggregate principal amount of \$12,845,000; and

WHEREAS, the Governing Body the City, pursuant to the Resolution No. 09-174 adopted on June 16, 2009 (the "Bond Resolution"), prescribed certain details pertaining to the Series 2009B Bonds, including the method of selection of Series 2009B Bonds for mandatory redemption; and

WHEREAS, the Underwriter of the Series 2009B Bonds has requested the City amend the Bond Resolution to modify the method of selecting Series 2009B Bonds for mandatory redemption;

**THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:**

**Section 1.** All words and terms not otherwise defined in this Resolution shall be defined as set forth in the Bond Resolution.

**Section 2.** Section 303 of the Bond Resolution is hereby amended to read as follows:

### **Section 303. Selection of Bonds to be Redeemed.**

(A) The Series 2009 Bonds shall be redeemed only in the principal amount of \$5,000, or integral multiples thereof. When less than all of the Outstanding Series 2009A Bonds of a series are to be redeemed and paid prior to maturity, such Series 2009A Bonds shall be redeemed in such manner as the City shall determine, with Series 2009A Bonds of less than a full maturity to be selected by lot in units of \$5,000. When less than all of the Outstanding Series 2009B Bonds are to be redeemed and paid prior to maturity, such Series 2009B Bonds shall be redeemed on a pro rata basis. "Pro rata" means in connection with any mandatory sinking fund redemption required to be made on the 2014 Term Bonds and the 2019 Term Bonds of any maturity, the amount that results from applying a fraction, the numerator of which is equal to the amount of such Term Bonds held by the Owner of such Term Bonds and the denominator of which is equal to the total amount of such Term Bonds outstanding.

(B) In the case of a partial redemption of Series 2009 Bonds when Series 2009 Bonds of denominations greater than \$5,000 are then Outstanding, then for all purposes in connection with such redemption each \$5,000 of face value shall be treated as though it were a separate Series 2009 Bond in the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of face value represented by any Series 2009 Bond is selected for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Series 2009 Bond to the Bond Registrar and Paying Agent (i) for payment of the redemption price (including the redemption premium, if any, and interest to the date fixed for redemption) of the \$5,000 unit or units of face value called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Series 2009 Bond of the aggregate principal amount of the unredeemed portion of the principal amount of such Series 2009 Bond. If the Owner of any Series 2009 Bond of a denomination greater than \$5,000 shall fail to present such Series 2009 Bond as aforesaid, such Series 2009 Bond shall, nevertheless, become due and payable on the redemption date to the extent of the amount called for redemption.

**Section 3.** The mandatory redemption provisions relating to the Series 2009B Bonds set forth on Exhibit C to the Bond Resolution are amended to read as follows:

**2009B Bonds Mandatory Redemption.** Each of the 2014 Term Bonds shall also be subject to mandatory redemption pro rata and payment on October 1, 2010, or on any Principal Payment Date thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the 2014 Term Bonds in each of the following years:

<b>Year</b>	<b>Principal Amount</b>
2010	\$ 905,000
2011	1,100,000
2012	1,150,000
2013	1,200,000
2014*	1,250,000

\* Final maturity

Each of the 2019 Term Bonds shall also be subject to mandatory redemption pro rata and payment on October 1, 2015, or on any Principal Payment Date thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the 2019 Term Bonds in each of the following years:

<b>Year</b>	<b>Principal Amount</b>
2015	\$1,300,000
2016	1,370,000
2017	1,445,000
2018	1,520,000
2019*	1,605,000

\* Final maturity

**Section 4.** This Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 5.** This Resolution shall take effect and be in full force from and after its passage by the Governing Body.

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**ADOPTED AND APPROVED by the Governing Body of the City of Wichita,  
Kansas, on June 23, 2009.**

(Seal)

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

By \_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

**Second Reading Ordinances for June 23, 2009 (first read on June 16, 2009)**

Proposed amendments to Chapters 3.11, 3.28, 4.04, 4.12, and 4.16 of the city code regarding Entertainment Establishments, Drinking Establishments and Community Events.

**ORDINANCE NO. 48-352**

An ordinance amending sections 3.08.030 and 3.28.020 of the code of the City of Wichita pertaining to cabarets and dance halls, creating sections 3.30.010, 3.30.020, 3.30.030, 3.30.040, 3.30.050, 3.30.060, 3.30.070, 3.30.080, 3.30.090, 3.30.100, 3.30.110, 3.30.120, 3.30.130, 3.30.140, 3.30.150, 3.30.160, 3.30.170, 3.30.180 and 3.30.190 of the code of the City of Wichita, Kansas, pertaining to Entertainment Establishments and repealing the originals of sections 3.08.030 and 3.28.020 of the code of the City of Wichita, Kansas.

**ORDINANCE NO.48-353**

An Ordinance creating sections 3.11.065, 4.16.075, 4.16.085, and 4.16.087, amending sections 3.11.020, 3.11.150, 4.04.010, 4.04.040, 4.04.045, 4.12.050, 4.12.140, 4.12.150, 4.16.070, 4.16.090, 4.16.100, 4.16.120, 4.16.130 and 4.16.135 of the code of the city of Wichita, Kansas, pertaining to alcoholic liquor and repealing the originals of sections 4.04.010, 4.04.040, 4.04.045, 4.12.050, 4.12.140, 4.16.070, 4.16.100, 4.16.120, 4.16.130 and 4.16.135 of the code of the city of Wichita, Kansas.

Proposed Amendments to Plumbing Code (Title 21.04) Relating to ProPress Copper Fittings for Natural Gas and LP Gas Piping.

**ORDINANCE NO.48-355**

An ordinance creating sections 21.04.273 and 21.04.275 of the code of the City of Wichita, Kansas, pertaining to the uniform plumbing code and repealing section 21.04.270 of the code of the City of Wichita, Kansas.

DER2009-02 –Request for a Street Name Change from Wild Rose Cir., located on the south side of 37<sup>th</sup> Street North and west of Ridge Road. (District V)

**ORDINANCE NO. 48-356**

An ordinance changing a street name from Wild Rose Cir. to Beach Club Cir.

Acquisition by Eminent Domain of tracts required for the Greenwich; Harry to Kellogg Improvement Project. (District II)

ORDINANCE NO. 48-357

An Ordinance providing for the acquisition by eminent domain of certain private property, easements and right-of-way therein, for the purpose of acquiring real property for the construction and improvement of the Greenwich Road: Kellogg avenue to Harry street project, including the reconstruction of the intersection at Harry and Greenwich in the City of Wichita, Sedgwick County, Kansas; designating the lands required for such purposes and directing the City Attorney to file a petition in the district court of Sedgwick County, Kansas, for acquisition of the lands and easements therein taken and providing for payment of the cost thereof.